SEDFRE

KINGWOOD, IDELL, D. et. al. VS. CAMPBELL SOUP CO., INC. SUMTER, S. CAROLINA 1967
(JOB DISCRIMINATION)

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

---

[illegible]

PLAINTIFFS,

VS

[illegible]

DEFENDANTS.

---

) CIVIL ACTION NO.
) [illegible].

) [illegible]

VOLUME NO. [illegible]

PAGES [illegible] - [illegible]

[illegible]

MRS. MARY BLANDING

was duly sworn and testified as follows:

EXAMINATION BY MR. DEAKINS

Q Mrs. Blanding, have you ever filed an application for employment with Campbell Soup Company?

A Yes.

Q Did you file a written application?

A Yes, sir, that's right.

Q How many written applications have you filed with the Campbell Soup Company?

A I filed one employment application?

Q And then you filed another one with the company?

A No, I didn't filed but one.

Q The one you filed with the State employment office?

A That's right.

Q Mr. Deakins: I will ask the Reporter to mark this document as defendants' exhibit number 13 for identification.

(Document referred to is received as defendants' exhibit 13 for identification)

Mr. Deakins: Iwill also ask the Reporter to mark this document as defendants' exhibit number 14 for identification.

(Document referred to is received as defendants' exhibit 14 for identification)

Q (By Mr. Deakins) Mrs. Blanding, I would like to show you a document which has been identified as defendants' exhibit number 13 and ask you to look that over.

Mr. Finney: We will stipulate that that is an application she signed somewhere, she filed somewhere, and unsigned.

Mr. Deakins: And that is her signature?

Mr. Finney: It is not signed.'

Q (By Mr. Deakins) Have you had an opportunity to look over defendants' exhibit number 13?

A Yes.

Q Have you ever seen that exhibit before?

A Yes, I did.

Q Is that the application you filed for employment with the Employment Commission?

A Yes, sir.

Q Is that the application, filed at the employment office?

A Yes.

Q Now did you in fact file that application with the employment office?

A Yes, sir, I did.

Q Where did you get the application form?

A A lady give it to me.

Q At the employment office?

A Yes, sir.

Q You see that the application is dated in the lefthand corner, where they have the word "date", is dated 6-24-66?

A That's right.

Q Which would be June 24, 1966?

A That's right.

Q Now is that the date you filled out and filed that application?

A That's right.

Q Is that your writing?

A Yes, sir, that my writing.

Q Did you put the correct date in? The date you filed it out and filed it?

A Yes, sir.

Q And that is the date you filled it out and filed it?

A Yes, sir.

Q All right, now at the time you filled out this application did you talk to someone? Were you interviewed?

A That's right, yes, sir.

Q Who was it that interviewed you?

A It was a lady.

Q All right, can you describe her?

A No, I don't know her.

Q She she ask you some questions about the application?

A She just give me the application to x fill out and I turn it back in.

Q When you turned it back in did she ask you a few questions about it?

A She told me, said I would get a notice.

Q Now in your answers to inteerogatories, which have been filed

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in this case by your attorney, which you signed, stated you filed an application in February of 1966, which would have been before this application is dated. I am just wondering if we are confused in any way. Did you, are you sure you didn't file some sort of application with the employment office at one time and then later go out to the plant and file another application?

A Yes, sir, that's right, I did, I forget.

Q So you did file an application for employment?

A Yes, sir, that' right, I --

Q Now just let me state the question. The first thing you did was to file an application with the State Employment office?

A That's right.

Q Now after that, on June 24, 1966, you went out to the Campbell Soup plant and filed defendants' exhibit number 13?

A Yes, sir, that's right.

Q All right, now I am interested in what happened when you went out to the plant and filed this defendants ' exhibit number 13. Were you interviewed at the time you filed that application?

A No, I wasn't.

Q Who did you turn the application in to?

A To the lady.

Q All right, may I see that a moment please. You will notice that in the lefthand corner on the front page, and on the righthand corner of the front page there is some penciled writing, that is your writing?

A No, that is not my writing.

Q You will notice that the rest of the application is done in blue ink, with the exception of certain questions under the category of personal, which are done in black ink.

A That's right.

Q Now is the part that is done in black ink your writing or someone else's?

A That's right.

Q That is yours?

A Yes, sir.

Q So with the exception of the penciled writing in the left and righthand columns on the top of the front page, all the rest of the writing is yours?

A That's right.

Q On both sides?

A Yes, sir.

Q I notice you didn't sign it, but you did fill it out and turn it in?

A Yes, sir.

Q Now Mrs. Blanding, I would like to show you a document which has been marked for identification as defendants' exhibit number 14. Now is that a postcard you received through the mail?

A That's right, I received it through the mail.

Q Did you then deliver that to the Campbell Soup Company?

A That's right.

Q Now would that have been, did you deliver that postcard to the company after you filed your application?

A That's right.

Q So you filed your application at Campbell Soup Company on June 24, 1966.

A Yes, sir, I did.

Q And then later you went back out there and delivered this card?

A Yes, sirk.

Q Now when you went out there to deliver this card did you talk to anyone at that time?

A Yes, sir, I talk to a a girl.

Q Do you remember what she looked like?

A I don't know.

Q Was she in the personnel office?

A That's right.

Q Did she ask you any questions, or did you all talk?

A No, she just told me, this showthat I, um, this card show that I, yo~~u~~know, I ---

passed the test?

A That;s right, and they would soon call me to take the um, take the physical examination, but they ain't never called me.

Q Are you sure she said she was going to call you to take the physical?

A That's right.

Q Or did she say something about a test?

A She ain't say nothing about no more test.

Q At the time you took that card out there and had that discussion would that have been still in the month of June? You notice on the car it asks you to report on a certain day?

A That's right.

Q On June 29, 1966?

A That's right.

Q Would that have been the day that you delivered that card out there to the lady?

A Yes, sir, I guess so.

Q That would have been a few days after you filed your application?

A That's right.

Q Now the statements you wrote on the application, are they true and correct to the best of your knowledge?

A Yes, sir, that's right.

Q Now after you filed your application and after you went back out there, and gave them the card, and talked to the lady, did you ever go back out to Campbell Soup again?

A Yes, No, I didn't go back out there, until they called me.

Q They called you?

A That's right, they called me in September.

Q All right, do you know who it was that called you?

A I didn't know.

Q What did they tell you?

A They told me something about another test, take another test, I forgot the test.

Q Well did they ask you to come out and take a test?

A That's right.

Q Did you go out there?

A That's right.

Q Now other than that time, that is three visits you made to the plant?

A That's right.

Q Did you ever go out to the plant again?

A No, I didn't go no more.

Q Have you ever been refused permission to file an application with Campbell Soup Company? Have they ever told you you could not file an application?

A No, they didn't told me.

Q At any time you were out at the plant did any of the people at Campbell Soup that you talked with make any reference to your race?

A No, they didn't.

Q Did they ever tell you that your race would have anything to do with getting a job?

A No.

Q Now Mrs. Blanding, have you ever worked anywhere where they were engaged in processing poultry?

A No, I ain't never worked.

Q I noticed on your application that the only employment you listed is self employed, farming.

A That's right.

Q Have you done that all of your life?

A Thats right.

Q Is that the only work you have ever done?

A That's right.

Q You worked on your own place?

A That's right.

Q You never worked in any sort of industrial plant?

A No.

Q Have you ever applied for employment with any plant?

A No.

Q Except Campbell Soup Company.

A That's right.

Q How is it that you came to apply to Campbell Soup Company? When you had not applied anywhere else?

A Well I read it in the paper, that is all.

Q All right, did you register with the State Employment Security Commission that you were available to work and were looking for a job?

A That's right.

Q Was it the South Carolina Employment Security Commission that referred you to Campbell Soup Company?

A You mean down here at the ---

Q Yes, the employment office.

A Yes, sir.

Q The people at the State employment office told you to go to Campbell Soup Company?

A That's right.

Q And is that when you went out to apply and filed the application?

A That's right.

Q The State Employment agency never toldyou to go out and file an application anywhere else?

A No.

Q Mrs. Blanding, do you have any relatives employed by Campbell Soup Company?

A No, I donlt.

Q Do you have any friends working out there?

A No, I don't.

Q You don't know ~~anything~~ anybody that works out there?

A Yes, I know a few people work there.

Q You know a few people that work out there?

A That's right.

Q How many?

A Johnny McFadden is one.

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Q That is a he?

A That's right.

Q Anyone else?

A I don't know the name, but the last name is Helton.

Q Isthat a she?

A That's right.

Q She worked out there now?

A Yes,sir, I think so, as far as I know.

Q Is she a negro?

A That's right.

Q And McFadden is a negro?

A Yes.

Q Have you ever had any other relatives who have applied for a job at Campbell Soup Company?

A No.

Q Have you ever been arrested for anything?

A No, I haven't.

Q Now before you received this postcard, defendants' exhibit number 14, from the State employment office, did you take this manual dexterity test?

A Yes, I get the card before I take it.

Q Before you took the manual dexterity test?

A That's right.

Q Now let's don't confuse our tests, I am not talking about the written test you took at the company, but the one where you used the washers and the pegs in the holes.

A Yes, I take that too.

Q That is what I call the manual dexterity test.

A That's right, yes.

Q You took that at the State office?

A Yes.

Q And that was before you received the postcard?

A That's right, that's right.

Q When you took that test did you take it with a group of other people?

A That's right.

Q Was the test given to you by the people at the State employment office?

A That's right.

Q Was the test given to all of you in a group, at the same time?

A No, they give it to us, I take it with a crowd down there and they take some and then some more.

Q They took one group and then took another?

A That's right.

Q But there was a group of people taking the test at the same time you took it?

A That's right.

Q And were you all given the same amount of time in which to complete the test?

A That's right.

Q And this was before you filed your application for employment with Campbell Soup Company?

A That's right.

Q Now is that the only time you have taken the manual dexterity test?

A That's right.

Q When you were taking this manual dexterity test down at the State employment office were there any representatives of Campbell Soup Company there that you know of?

A No, not as I know.

Q And after you took the test you received this postcard?

A That's right.

Q How old are you at the present time?

A I am, I say about thirty-nine.

Q What is your birthday?

A March 25.

Q I believe you said March 5th on Your application.

A I made a mistake, it the 25th of March.

Q And were you born in the year 1926

A That's right.

Q Now Mrs. Blanding, on your third visit to the plant, that is, when they called you out there to take the test, that right7

A That's right.

Q And that was sometime in September?

Q When you got this call to go to the plant did you go out to the plant?

A That's right, I went to the plant.

Q Did you in fact take the test?

A I tried but I couldn't do it, I couldn't work that test.

Q Well did you, did you get the test form, did they give you the form to take the test?

A That's right, they give it to me.

Q Who was that, were there any other people taking the test at the time you took it?

A That's right, a crowd been down there that day.

Q How many were taking the test with you?

A I ain't know, but it must be look like about twenty something head was out there that day.

Q Were some of the people negro and some white?

A All was negroes, ain't no white been in the bunch.

Q Did someone give you instructions before you started the test?

A No, they didn't.

Q Who gave you the test form?

A It was a white girl.

Q It was a female?

A That's right.

Q She gave you copies of the test forms?

A That's right.

Q And then, did she tell you what the test was about, or tell you anything about the test?

A No, she didn't told me.

Q Did she read you any instructions?

A No, she didn't.

Q Do you think you could recognize the test form if I showed it to you?

A Yes.

Q I would like to show you a document which has been marked for identification as defendants' exhibit number 3.

A Yes, sir, this it.

Q Is that the type of form that you had?

A That's right.

Q Now when all you were giventhis test were you given a certain mount of time in which to complete it?

A That's right.

Q And when the time was up the buzzer went off?

A That's right.

Q And you all were given the same amount of time?

A That's right.

Q Now did you stay there and work on your test until the clock buzzed?

A That's right.

Mr. Rachlin: Do you have a copy of the test blank?

Mr. Deakins: No, I don;t. At least I have not located one.

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We are in the procees of trying to locate one now. My personal information is that we were not aware that she had taken the test, but they are searching for it and if we locate it we will bring it up here.

Q (By Mr. Deakins) When you completed the test were you talked to by anyone afteryou completed the test?

A Yes, a colored girl talked to me then.

Q All right, she was, was she one of the secretaries down there?

A That's right, must be.

Q She called you in privatedly and talked to you?

A That's right.

Q What did she say to you?

A She told me I didn't pass the test, of course I know I didn't pass the test because I couldn't answer it.

Q Did she tell you how many you had gotten right?

A No.

Q Did she, had she marked x/s and check markes next to your answers?

A That's right.

Q Did she show you where she had done that?

A Yes, she give it to me.

Q She told you you had not passed the test?

A That's right, and I know I didn't pass it.

Q Well do you know of anything Mrs. Blanding, when you wer taking the test, do you know of any way in which you were treated any differently then the other people that were taking the test?

A No.

Q Was there anything you considered to be unfair about the way you were given the test?

Mr. Rachlin: I object to that, that calls for a conclusion on her part about a test she knows nothing about. How could she possibly know whether the test was submitted fairly or unfairly. It calls for hearsay information by colored people, and how does she know how it was marked or graded or whether the company gave out proper instructions. From what she said the test was obviously submitted unfairly, and you are asking her to contradict the very testimony she gave, and now you are going into cross examination --

Mr. Deakins: Well you are trying to get her to say something yourself.

Mr. Rachlin: She said it was unfair herself, she said nobody gave her any instructions, that by definition is unfair.

Q (By Mr. Deakins) Do you understand my question? You know of anything that they did or said when they were given you this test --

A No, I --

Q That was unfair to you?

A No, I didn't.

Q You don't?

A No.

Q Well did you, did this woman that was talking with you there in the office in private, did she have the test in her hand?

A That's right.

Q She didn't give you the test before you left, did she?

A No.

Q She kept it?

A That's right.

Q Allright, when you were talking to this lady in the private office about the test, what did you say?

A I didn't say anything.

Q Did you state any objections to her about the test?

A No, I didn't said nothing.

Q Make any complaints about the test.

A I didn't see nothing in giving nobody a test like that, because I know I couldn't do nothing like that, I know it ain't had nothing to do with nobody working nohow.

Q Did you tell her that?

A No, I didn't tell her that, but I say it to myself.

Q You didn't make any objection?

A No, I didn't.

Q Or complaints to her?

A No, I didn't.

Q And that was a negro employee of Campbell Soup Company?

A That's right.

Q Was she interviewing, did you notice that the other people that had taken the test were going in and being interviewed by her?

A That's right.

Q And this was in September of last year?

A That's right, September.

Q Have you ever been given any instructions by any other people about how to take this Wonderlic test?

A No, sir.

Q You ever attended any meetings when anybody told you what the answers to the Wonderlic test were?

A If I did I can't remember.

Q You know Reverend Lewis?

A That's right.

Q You ever talked to him about the Wonderlic test?

A No, I didn't.

Q Are you sure?

A Yes.

Q How many years of schooling have you had?

A Well I went to the tenth grade.

Q You completed the tenth grade?

A No, I didn't complete it.

Q All right, now where did you attend school?

A I went to the Manning Training School.

Q Where is that, in Manning?

A That's right.

Q All right, now you completed the nith grade, is that right?

A That's right.

Q And then started the tenth but didnpt complete that?

A That's right.

Q Now when you were in school, up until the tenth grade, every year did you get promoted a grade?

A Yes.

Q You never flunked a grade?

A No.

Q During the time you went to school did you take courses in arithmatic?

A Yes, sir.

Q And english?

A That's right.

Q writing, reading?

A That's right.

Q Did you ever fail any of those courses?

A Well, sometimes.

Q Pardon?

A Yes, sometimes I fail.

Q You remember which ones you failed?

Mr. Rachlin: Objection.

A No, it so long, I don't remember, I didn't get them all right.

Q Do you know how many courses you did fail?

A No, Idon't.

Q While you were in public school, this was public school in Manning?

A That s right.

Q When you were in school there in Manning, did you have to take written tests on these various courses?

A Yes, sir.

Q Now Mrs. Blanding were you ever given a physical examinatio by Campbell Soup Company?

A No, I didn't.

Q Have you ever received any sort of disability payments, for injuries?

Mr. Rachlin: Objection.

A No, sir.

Q (By Mr. Deakins) Ever had any serious illnesses?

A No.

Q Mrs. Blanding, I would like to show you defendants' exhibit number 13 again, and you will notice that on the first page of this application you stated that in case of emergency notify Mrs. Samuel, who is that?

A Leila Samuels. From Manning.

Q And is she a relative of yours, or a friend?

A That's right, friend.

Q And then under the category of previous employment you only listed self employment.

Mr. Rachlin: Objection, we have been through this and I object to this question as being repetitious.

A That's right.

Q (ByMr. Deakins) and you didn't work for anyone else?

Mr. Rachlin: We object to that also, repretitious.

Q (By Mr. Deakins) So you have never had any previous employment for any other company, any other person?

A No.

Q Now you will notice on the back side of your application you have given three character references, the first one is Reverend J. E. James?

A That's right.

Q Is that your pastor or minister?

Mr. Rachlin: Objection, irrelevant, not pertinent to any issue in this case.

A Yes, sir, that the elder.

Q Is he a personal friend of yours?

A That's right.

Q All right, and then the next one you list is who?

A Miss Estelle Samuels.

Q And who is she?

A She is a school tacher, teaches school.

Q Was she your school teacher?

A No, she never teach me.

Q Is she a friend of yours?

A That's right.

Q And then you list the Peoples Grocery Store?

A That's right.

Q How do you know those people?

Mr. Rachlin: Objection, I instruct her not to answer the question, irrelevant and an impertinent question.

Mr. Deakins: You instruct the witness not to answer the question?

Mr. Rachlin: Yes, just shear desire to get personal information.

Mr. Deakins: I think counsellor, you should read your answers to intesogatories before you make those kind of statements.

Q (By Mr. Deakins) Did you give the company any more ~~ifx~~ information on people that they could check with to check your refreences?

A Yes, I did.

Q Who else did you give them?

A No.

Q You did not give them anyone else?

A No.

Q So the only people you told the company that the could check with for references are the people that you listed on this application?

A That's right.

Q Do you have any knowledge as to how the company went about checking your references?

A No, I don't.

Mr. Rachlin: That question is irrelevant.

Q (By Mr. Deakins) Did you ever have any discussion with any company representative about what references they had checked?

A No, I didn't.

Q Has anyone ever reported to you any information about having been checked with by Campbell Soup Company, concerning your application?

A No.

Q Now Mrs. Blanding, in your answers to interrogatories you have stated that you believe the references were checked in such a manner that they discriminated against negroes.

A That's right.

Q What can you tell us, how can you support that statement? What do you know that leads you to believe that.

A Well, I say, the colored don't get the chance the whites get, don't get a education like white people do.

Q What information do you have for that, concerning the way the references were checked by the company?

A Because they, because white can get a job quicker than the colored.

Q What would that have to do with the way the references were checked?

A They always can get a job.

Q Let me ask you this, do you have any infomation about the way the references were checked by Campbell Soup Company on these applications?

A No.

Mr. Deakins: Counsellor, I am going to renew my question that this witness tell me what relationship she has with this Peoples Grouery Store.

Q How do you know the people at Peoples Grocery Store?

A That where I do business.

Q Is that where you trade?

A Yes.

Q Are you personal friends to the fellow that owns the grocery store?

A That's right.

Q Would it be accurate to say Mrs. Blanding, that the references of the people you put down on your application as references, were people that you expected go give you a good recommendation?

A I don't know.

Q Pardon?

A Yes, I guess they would.

Q Do you have any information that would lead you to believe that the people you listed as personal references would give you a bad recommendation?

A No, Idon't reckon so.

Q Mrs. Blanding, have you ever filed or signed any charges against Campbell Soup Company complaining that you have been discriminated against?

A Yes, I did.

Q All right, how many such charges have you filed?

A One.

Q I would like to show you a document which has been marked for identification as defendants' exhibit number 10, and ask you to look that document over for us.

Mr. Finney: Is that page two, where she signed?

Mr. Deakins: Yes.

Q (By Mr. Deakins) Have you had an opportunity to look that over?

A You mean where I signed, wiere I got my name signed?

Q Is that your signature that you placed on page number 2?

A That's right.

Q All right. Now at the time that you signed your name, to page number 2 of defendants' exhibit number 10, was the first page of that exhibit attached?

A I don't know, it might be. I wouldn't say for sure. I didn't pay attention.

Q Have you ever, do you recall ever having seen page number 1 of defendants' exhibit number 10?

A I might have see it, I wouldn't say I didn't see it and I wouldn't say I did. I might have. I just didn't pay any attention.

Q Well when you signed your name on page two of that exhibit, how many pages were there?
A I don't know, Ididn't pay it any attention.
Q When you signed your name did you read anything before you signed it?
A No, I didn't.
Q Just walked up and signed your name?
A Yes, I just signed it.
Q Before you signed your name had anyone read anything to you?
A No.
Q Did you know what you were signing?
A Yes.
Q Pardon? I was - I just sign it.
Q Did you know what you were signing?
A Yes.
Q What was it you thought you were signing?
A Signing for the, to get, um, so I can get a job.
Q Signing to get a better job?
A That;s right, so I could get a job.
Q Did someone tell you that?
A Yes.
Q Who was it that told you that?
A Well I was at the meeting and I get information from them.
Q From who?
A_ I ain't know some of them names, I don't know any names,

I hear them talking.

Q Were these men, what were these men talling you?

A I ain't know what they was telling, I know I just sign, I ain't hardly know, I know I sign the paper.

Q I am sorry, I didn't hear you.

A I say I don't know, I know I sign it.

Q Well but, what I am trying to find out, and I don't want to mislead you on this, but I am just trying to find out if you really knew what you were signing.

A I was signing to get a better job, that way, look like they a in't going to give you nothing.

Q Well let me ask you this, did you just think this to yourself that if I sign this I will get a better job?

A That's right, yes, that's right.

Q Well did somebody tell you that, that if you signed this we will get you a better jor, or were you just thinking that?

A Yes.

Q Yes what?

A Yes, I don't know.

Q Pardon?

A I don't know.

Q Now where were you when you signed it?

A In Sumter.

Q Were you in some meeting?

A Yes.

Q All right, was it a large meeting, were there a lot of people there?

A Ain't so many people been there.

Q Who was there that you knew?

A I know Reverend Lewis, I know he was there.

Q Who else?

A Some more been there, I don't know.

Q Well did you have any discussion with Reverend Lewis during that meeting about this ---

A No, I didn't.

Q About this document?

A No, I sure didn't.

Q At the time you signed this second page of this document, you notice that next to your signature on the lefthand are the numbers 759, and then the number 9.

A Yes, sir.

Q All right, can you tell me if you recall, at the time you signed your name on this second page of this document, was there any writing below your name or was it empty ~~before~~ below your name?

A I ain't pay no attention, I don't know.

Q All right.

A I don't know whether it was any there or not.

Q Do you know Mrs. Dorothy V. Sampson, a lawyer?

A I ain't know her but I had seen her once.

Q Has she ever been your attorney? Ever done any work for you?

A No.

Q Did you have any discussion with Mrs. Dorothy Sampson?

A No, I didn't had none.

Q When you signed this document or during the meeting at any time, did anybody ask you to raise your hand and swear that what you were signing was true?

A No.

Q During this meeting did you make any statement to anybody about any complaints about the State Employment office?

A No.

Q Did you tell anybody during this meeting about any complaints you had against Campbell Soup Company?

A Yes.

Q What did you tell them? First or all, who did you tell it to?

A I don't know who it beem.

Q What did you tell them?

A Well I ain't know.

Q You don't remember what you told them?

A No, I sure don't, I can' remember what I told them.

Q Did you tell them anything about having any complaints against Campbell Soup because they used the State Employment office?

A No, I, I can't remember. It been so long.

Q All right, now after you signed your name to the second page of defendants' exhibit number 10, did you thereafter make this trip to Washington with the others?

A You say I was there?

Q Did you make this trip to Washington?

A No, I didn't.

Q Now aside from signing the second page of defendants' exhibit number 10, did you ever on any other occasion sign or file any complaint against Campbell Soup Company, complaining of discrimination?

A I forget if I did, I don't know.

Q Today you can't remember having filed or signed any other complaint against Campbell Soup Company, can you?

A What you say?

Q Today, you can't remember having filed or signed any other complaint against Campbell Soup?

A No.

Q Mrs. Blanding, do you have any complaint about the manual dexterity test you took at the employment office?

A Yes, I don't see no need of having a test like that.

Mr. Deakins: Strike that question.

Q (By Mr. Deakins) Do you have any complaints about the finger test that you took down there at the employment office?

A No, because, I don't think, I don't have no complaint.

Q Was there anything that they did or said when you took that finger test which you thought was unfair?

A No, I didn't.

Q You don't claim that you were discriminated against, or that any negroes were discriminated against because of that test?

A No.

Q Now you do claim that you feel like Campbell Soup Company has discriminated against you?

A That's right.

Q Now what do you base that complaint on?

A Because they had, white people out there working, I know a lot out there working sign behind us, and I know we could be working just like them.

Q Well your complaint is that others were hired and you weren't?

A That's right.

Q Can you been any more specific about that? Just why you think you weren't hired and others were?

A Because I am colored and I reckon they white, that's why.

Q Well what do you base that on?

A Because white always can get jobs quicker than colored. They always look out for them.

Q You know colored employees work for Campbell Soup, don't you?

A More white out there than colored.

Q Well is your complaint then that they hired more white

employess than they have negro employees?
A Yes, and um, I know that what it is in education too.
Q Is that a part of your complaint too, educational standards?
A That's right.
Q And what do you base that complaint on?
A Well (witness shakes head).
Q Is it that you feel like the schools that you went to were not as good as the schools that the white people went to?
A Yes.
Q Anything dlse?
A That is all.
Q Pardon?
A I say, no, I know we didn't get the education they got.
Q Is there any other thing that you know of that you would say had anything to do with your feeling that you have been discriminated against by Campbell Soup?
A I don't know.
Q Has any representative of the company done or said anything which causes you ---
A No.
Q To believe you have been discriminated against?
A No.
Mr. Finney: We object to that question and the answer and move it be stricken, on the ground this witness would not know what the company had done.

Mr. Deakins: Oh,I am sorry, I meant to limit that question to --

Mr. Finney? Does she know.

A (By Mr. Deakins) Do you know of anything that has ben said or done by the representatives of Campbell Soup Company to discriminate against you?

A No, I sure don't.

Q In any discussions that you have had with any representative of Campbell Soup Company --

A No, I --'

Q Let me finish the question. In any, now you have had several discussions with people out at Campbell Soup, when you went out there to file your application, when you took that card back out there and when you went to take the Wonderlic test. Now on those three occasions you saw representatives of Campbell Soup Company, is that right?

A That's right.

Q Did you ever have any other discussions with anyone at Campbell Soup Company other than those three times?

A No, I didn't.

Q Now on any one of those three trips that you talked with anybody out at Campbell Soup Company, did they ever say anything to you about following any local customs in the area or anything like that?

A No, they didn't.

Mr. Deakins: I have no further questions.

EXAMINATION BY MR. FINNEY

Q Mrs. Blanding, I believe you said that it is hard to, for negoees to get jobs in this community, didn't you?

A Yes.

Q In plants and that kind of thing?

A Yes.

Mr. Deakins: I object to that question.

Q (By Mr. Finney) And I believe you also, in reply to counsel's question, talking about customs, you tried to get work at Campbell Soup Company?

A Yes, sir.

Q And you are a negro?

A Yes.

Q And it has been hard for you to get a job?

A That's right.

Q Now this written test that you took in school would always relate to work you had gone over in school, wouldn't it?

A Yes.

Q The Wonderlic like you took at Campbell Soup, did you see anything about chicken plucking or anything?

A No, I sure didn't. You don't have to take no test for that.

Q Now you remember I read to you a copy of the decision, of the EEOC in thecase of Mable Williams vs. Swanson Division of Campbell Soup Company, you remember we went over this and I tried to explain it to you?

A Yes.

Q I want to read in the record, paragraph C, page 3, of that decision, Reference checks. Reference checks which were not required in writing, are a major stumbling block and often a barrier to many negro applicants, inso much that some employers, parenthese, especially private households and farmers, close parentheses, are reluctant to lose this source of low paid labor of those negroes already hired, at least one-half were formerly domestics, paid at the rate of $3.50 a day. Did I read this part of this thing to you, or you remember me reading it to you?

Mr. Deakins: I object to the question.

A Probably.

Q (By Mr. Finney) You know the EEOC is a government agency?

A That's right.

Q And have you ever talked with any Government men yourself?

A No,sir.

Mr. Finney: I have no further questions.

## EXAMINATION BY MR. DEAKINS

Q Now Mrs. Blanding, you never have worked for anybody else have you?

A No, I have not, but I want to get work here.

Q You think your husband would be reluctant to let you leave the farm and get a job somewhere else?

A Sure, that is the only reason he let me leave, to get a job.

EXAMINATION BY MR. FINNEY

Q Get a job, your husband said you could get a job if you got a good job?

A Yes, If I didn't have to go in the house and work for nothing.

MRS. ANNIE MAE GOING

was duly sworn and testified as follows:

EXAMINATION BY MR. DEAKINS)

Q Is it miss or mrs?

A Mrs.

Q You are presently married?

A Yes, married.

Q Now Mrs. Going, did you go, Goings, I believe it is?

A Yes,

Q It has an S on it?

A That's right.

Q Mrs. Goings, did you ever file an application for employment with Campbell Soup Company?

A Yes, I did.

Q Was it a written application?

A That's right.

Mr. Deakins: I ask the Reporter to mark this document as defendants' exhibit 15 for identification.

(Document referred to is received as defendants' exhibit 15 for identification)

Q How many applications, written applications for employment did you file with Campbell Soup?

A I just filed only one application.

Q All right, I would like to show you a document which has been marked for identification as defendants' exhibit number 15, and I will ask you to look that document over. Have you had an opportunity to look that document over?

A Yes.

Q Is that your signature on the reverse side of defendants' exhibit number 15 for identification?

A Yes.

Q All right, is that a copy of the application you filed with Campbell Soup Company?

A Yes.

Q I notice - I am sorry, the original application you filed. Is this the original copy of the application?

A Yes.

Q I notice that it is dated March 1, did you fill out that date? Is that your signature, your writing?

A Yes, that's my writing.

Q Is that the day that you filled out that application? Did you put the right date in when you filled it out?

A I take the test on the 4th of March but ---

Q Well you filed the application before you took the test?

A Yes, that's right.

Q All right, and when you made out your application, on the date you pût in March 1?

A That must be a mistake.

Q Pardon?

A Probably i might have made a mistake.

Q In the date?

A That's probably right, I went back and take the test on the 4th of March.

Q This would have been then March 1st, 1966, that you filed this application, last year?

A That's right.

Q Now it eppears that you have filled this application in in black ink on both sides? Now is all that writing which is in answer to the questions asked on the application in black ink, is that all your writing?

A Yes, that's mine.

Q I notice on the front page of the application, it says shifkt desired, or preferred, and you put evening.

A That's right.

Q Is that your writing?

A Yes.

Q And above that it says in parantheses, second shift, that is not your writing, is it? These words, second shift?

A No, that's not my writing.

QDo you know who wrote that in?

A No, I don't.

Q At the time youfilled out this application Mrs. Goings, did you talk with anyone out at the plant, anyone in the personnel office?

A Yes, I did.

Q Do you know who that was you talked to?

A I talked to one of the ladies and after that I had asked to see Mr. Partin, and talked with him.

Q All right, tell me what your discussion was with this lady before you talked to Mr. Partin.

A I told her that I, this is the blank I fill out to the employment, and they told me to bring it over to the plant to the employment office, after the employment office was over there.

Q So you were not referred to Campbell Soup Company by the State office?

A No, they give me a blank and I take it out there and I showed it to Mr. Partin, but he aaid it would be about two years before I could take another test like that one.

Q Like what?

A Like the one I take downtown.

Q All right, now I am not talking about the test yet, I am talking about this application. You went out and filed this application and you took a test a few days later?

A That's right.

Q Now I am talking about the day you took this application out there, you filled it out and signed this application at the plant. This would have been March 1, before you took the test?

A No, I fill that out to the employment office in town.

Q In what employment office, the State Employment office downtown?

A Yes, the one downtown.

Q After you filled it out did you take it out to the plant and give it to them out there?

A No, I went out there and fill out another one at the plant.

Q In other words you filled out two applications?

A That's right.

Q Now isn't defendants' exhibit number 15, the second one, the one you filled out out at the plant?

A Now I don't know what date I went out there, it been so long, but anyway I know I went out there and filled out one.

Q Isn't this defendants' exhibit number 15 the one you filled out at the plant?

A Yes.

Q Now it may be, as I understand it that this March 1 date isn't quite accurate, but it was right in that periof of time?

A Yes.

Q The first part of March?

A Yes.

Mr. Finney: Or the last part of February, right in that time.

Q (By Mr. Deakins) Oh, yes, it could have been the last part of February or the first part of March you filled out this application at the plant?

A Yes.

Q Now at the time you filled out this application at the plant did you talk to anybody out at the plant at that time when you turned in this application?

A Yes, I talked to the lady and also Mr. Partin.

Q Now this was before you took this test you have been talking about?

A Before I took the test, I have never been out to the plant until after I take the finger test.

Q I am sorry, I misunderstoo you. So ~~xxxx~~ at the time, do I understand now, I am not trying to lead you into anything, I am trying to find out what the facts are. Is it correct that at the time you filled out defendants' exhibit number 15, which is the application you filled out out at the plant, at the time you filled this application out, you had already taken the finger test?

A That's right.

Q So when you did fill out this application you did talk to the lady and you did talk to Mr. Partin?

A That's right, at the plant.

Q All right, now tell me what your discussion was with the lady at Campbell Soup Company.

A I told her that I came in, to see if they had a vacancy for a job, and she told me I would have to talk with Mr. Partin about that, and I sit down about, I wait on him about thirty minutes and he came in and I talked with him.

Q Now you recognize Mr. Partin as being here in the room?

A Yes.

Q You can identify him, this isthe man you talked to?

A Yes.

Q Tell me what your discussion was with Mr. Partin.

A He asked me did I receive a card, when I take the finger test. I told him no I did not receive one, and he told me, well, it would be about two years before this test would be given again, if I didn't receive a card he couldn't do me any good at that time.

Q Do you remember him saying something about two years?

A Yes, sir, he said it was two years before that test would be given, to anybody.

Q Did he say who was going to give it in two years?

A No, he did not.

Q Anything else in your discussion with Mr. Partin at that time?

A No, I did not.

Q Did you tell him anything about the test you had taken?

A At the employment office?

Q Yes, did you tell Mr. Partin anything about the test?

A Yes, I told him I take the test and he asked me did I get a card in the mail. I told him no I didn't receive a card, and he said if I didn't receive a card ain't nothing he could do about it.

Q Anything else you all talked about?

A No, that's it.

Q Now, since you were out at the plant and talked to Mr. Partin, and to this lady this one time, have you ever been out there again?

A No, I never went back any more.

Q Have you ever phoned out there about a job?

A I never phoned out there.

Q Now I notice on your application, under the category of previous employment, you list Daniels Grocery.

A That's right.

Q That is a place where you worked?

A That's right.

Q As a clerk?

A Yes.

Q And uou list no other place that you worked?

A No.

Q Now you say that you were layed off at Daniel's Grocery?

A That's right.

Q What was the reason for the layoff, were you told?

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A Business was bad.

Q You weren't discharged for misconduct?

A No.

Q Are you on a friendly relationship with the people at Daniel Grocery now?

A That's right.

Q Do you have any information that lead you to believe that they would give you a bad recommendation if they were phoned for a recommencation?

A No, I do not.

Q And you say on your application, in case of emergency notify Carl McFadden?

A Yes. Pearl McFadden.

Q Who is that?

A That is one of my neighbors.

Q Is she a friend of yours?

A Yes.

Q And you have another name there too, don't you? You have the name Pearl McFadden listed on your application but you have another name listed on there too.

A That's Runetta Goings.

Q Who is that?

A That is my daughter.

Q You are on friendly relations with your daughter?

A That's right.

Q On the back side of your application you give two character references, one is Pearl McFadden and you list her also on the front side. That is the same Pearl McFadden?

A Yes.

Q And then you list a Ruth Conyers, who is she?

A That is a friend of mine.

Q Now do you have any information that would cause you to believe that any of these individuals that you listed as character references would give you a bad recommendation?

A No, I don't.

Q Aside from the people that you have listed on your application for references, did you tell either of the ladies you talked to or Mr. Partin out at Campbell Soup Company, any other persons they could check with as references?

A No, I didn't

Q Do you have any information Mrs. Goings, about any reference checking that Campbell Soup did on you?

A No.

Q You don't know whether they checked your references or not?

A No, I don't know.

Q Do you have any information that the company ~~che-kded~~ checked any one to see whether or not you ought to be hired at Campbell Soup Company?

A No, I don't know.

Q All right, now Mrs. Goings, the statements that you made

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on your application which is defendants' exhibit number 15 for identification, did you answer all the questions truthfully to the best or your knowledge?

A Yes, sir.

Q Now you notice some writing in the top lefthand corner of the front page of the application in black ink, and then in blue ink, you see that in the lefthand corner, up here?

A Oh, yes.

Q That is not your writing, is it?

A No.

Q Now you have never at any time worked for any company engaged in the processing of poultry?

A Any what?

Q You never have worked for any company that is engaged in proceesing poultry?

A No, never have.

Q Hae you ever worked for any type of factory or plant?

A No, never have.

Q Have you ever applied for employment at any type of factory or plant besides Campbell Soup Company?

A No.

Q What caused you to apply for a job at Campbel Soup Company?

A Well Ijust wanted a better salary xxmbdx than I was getting.

Q But you didn't apply at any other plant in the area besides Campbell Soup Company?

A Yes, I applied over to Exide Battery.

Q Did you file a written application out there?

A I will out an application.

Q Did you take any sort of physical examination?

A No.

Q Did you have to take any sort of written test?

A No, just fill out an application, never hear from it any more.

Q Did you ever hear back from it?

A No.

Q Did you file any charge claiming discrimination against, or by Exide Battery against you because of your race?

A No, did not.

Q Do you have any information Mrs. Goings, which leads you to believe that you have been discriminated against because of your race by anybody besides Campbell Soup Company?

Mr. Rachlin: Objection.

A Repear that over again.

Q (By Mr. Deakins) Do you have any information which leads you to believe that you have been discriminated against because of your race by any company or anyone besides Campbell Soup Company?

Mr. Rachlin: When, ~~current~~ currently or through her history as a child, up to the present time?

Mr. Deakins: In her whole life.

Mr. Rachlin: Oh, I think that speaks for itself, she is a negro in South Carolina ---

Mr. Deakins: Don't give her the answer, counsellor.

Mr. Rachlin: No negro in South Carolina knows the answer to that question, it is pretty obvious.

Q (By Mr. Deakins) Do you have any information?

A No, I don't.

Q Do you have any relatives that are employed at Campbell Soup Company?

A No.

Q Do you have any friends that work out there?

A Yes, I have a couple of friends.

Q Who are they?

A Mrs. Ruth ~~Rught~~ Wright, Runette Gaillard, Alphena (?) Bracey.

Q All right, are they all working out there now for Campbell Soup?

A Yes, they are working out there now.

Q Are all these three of these people negroes?

A That's right.

Q Have you ever had any relatives that have applied for a job at Campbell Soup Company?

A No.

Q Have you ever been arrested, Mrs. Goings?

A No.

Mr. Rachlin: That question is objectionable as to form, as you know counsellor, that violates, that is an improper question in any court of law. If you ask has she been convicted of a crime ---

Mr. Deakins: I am asking the question on the application.

Mr. Rachlin: Yes, sir, but that is your application. The question was wrong and improper from the beginning, and it is wrong here and I object both ways.

Q (By Mr. Deakins) Have you ever been arrested?

A No, I did not, never have.

Q Now Mrs. Goings, since, as I understand it before you ever filed your application at the plant, you had taken the finger test?

A That's right.

Q All right, now when you, now what you call the finger test is what I call the manual dexterity test.

A That's right.

Q Now how far before the time you filed your application with Campbell Soup did you take the finger test?

A I took the finger test in, the 4th of March, 1965.

Q 1965 or 1966?

A 1966.

Q But this was shortly before you filed your application at Campbell Soup Company?

A Yes.

Q Now where did you take this test?

A Down at the employment office downtown.

Q This was the State Employment office?

A That's right.

Q Now at the time you took this test did you take it with a group of other people?

A That's right.

Q How many of you took that test at the same time?

A I guess about twelve or thirteen head.

Q Were you given this test by the people down at the State Employment office?

A That's right.

Q Was there any representative of Campbell Soup Company there to your knowledge?

A No, I don't know.

Q Now were you all times on how long you had to take the test?

A How long? Oh, it was given for about thirty minutes.

Q Were you all given the same amount of time?

A That's right

Q Was, well what is actually involved in the test? What were you going?

A Putting the little plugs in the holes, how fast you could work your fingers.

Q After you completed the test what did they tell you? Did they tell you anything?

A The lady said I did well, I would receive a card in the mail, but I never did receive one.

Q Did you ever go back to check again?

A Yes, I went back about two months later and it was a man waited on me, and he said the reason I didn't get a card in the mail, say I just lacking one fraction, and he couldn't send me over to Campbell.

Q Said you lacked one fraction passing the test?

A Yes.

Q Well, do you have anything that leads you to believe that you were treated any differently then the other people that took the test at the same time you did? Were you treated any differently than they were in the way the test was given?

A Repeat that again?

Q Do you have any information that leads you to believe that you were treated any differently by the people down at the State Employment office, than the other people were treated who took the test at the same time?

A Well yes, the time I take it and um, I think all the rest that take it along with me, the working at the plant I think.

Q At Campbell Soup working?

A Yes.

Q Well, the ay the test was given, were you given any different instructions than the others?

A No.

Q Was the test given to themat the same time and the same way it was given to you?

A Right.

Q How many people did you say were testing with you?

A About thirteen or fourteen yead.

Q And how many of those were negroes? Do you know?

A Just about, over half, about six or seven was colored.

Q And those six or seven negroes are working at Campbell Soup Company now?

A Yes.

Q But you know of no way in whihc the test was given to you any differently than any of the other people who stood the same test?

A No.

Q At the time, I believe you talked to the lady right after you got through taking the test, at the employment office, and she told you that you had done well and had passed?

A That's right.

Q And then a couple of months later, you had a discussion with a man down there?

A That's right.

Q And he told you you had failed by just a fraction?

A Yes.

Q Now at the time you had this discussion with the man about just missing it a fraction, did you ask permission to take the test again?

A Yes, I did.

Q What did he say?

A He give me a blank and told me to take it out to the plant and he hope me all the luck.

Q What kind of blank did he give you?

A Another blank to fill out.

Q You mean application blank?

A That's right.

Q Like defeddants' exhibit number 15?

A Yes, something like that, and I fill it out and take it out there.

Q Well now is that, defendants' exhibit number 15?

A I don't know wheeher that's the same blank or not, but, I believe that blank was a little bit longer than that blank there, but, just another fomm to fill out.

Q How many applications did you fill out with Campbell Soup?

A I just filled two.

Q You filled out two applications?

A Yes, after I went back to see about my card, with this man, and he give me another one and told me to take it to the plant, so I fill it out and take it out there like he told me.

Q I am a little confused. You filed an application ---

A But I leave that one out there.

Q You have only left one application at Campbell Soup Company?

A That's right.

Q Isn't that defendants' exhibit number 15, this one?

A I don't know. I don't know what, date I went out there. Well that is the one I took down to the office, look like.

Q Well you filled out one application at the State Employment office.

A That's right.

Q And you left that one there at the State Employment office?

A Yes.

Q And then later you filed out another application?

A Yes.

Q And you took that one out to Campbell Soup Company?

A That;s right.

Q So you have only given one to Campbell Soup Company?

A That's right.

Q And isn't that defendants exhibit number 15?

A Probably could, I just don't know now.

Q Well about when was it you delivered this application at Campbell Soup Company?

A It was about two months after I take the test to the State department.

Q Well what part of the year was it? Could it have been March, 1966?

A Yes, I believe it was in March.

Q And you had taken ---

A It had to be in March, it just was - no, I believe it was in May.

Q What was in May?
A When I take the one out to the plant. It couldn't be in March, because I took the test in March, and I wait two months, and it had to be in May.
Q And you remember that it was about two months after you took the test that you took the application out to Campbell Soup?
A Yes, I know it was two months and I, I could check back. And he give me another blank and told me to take it out to the plant.
Q Well at the time you delivered this application out to the plant was when you had your discussion with Mr. Partin?
A That's right.
Q And that is the only discussion you had with him?
A Yes.
Q You didn't have any discussion with Mr. Partin at the time you filled out your first application?
A No, I did not.
Q And turned that in to the State Employment office?
A Yes, sir.
Q So at the time you were out talking to Mr. Partin, you had already been told by this man down at the Employment office that you had flunked the finger test?
A Yes, sir.
Q Ok. Did you ever ask the State Employment agency if you could take the finger test again?

Mr. Rachlin: She has previously answered that question.

A Yes.

Q (By Mr. Deakins) What did he tell you?

A He said no, it would be two years before that test would be given to anybody again.

Q Is that what the State Employment man said?

A Yes.

Q Or did Mr. Partin make that kind of statement to you?

A Both of them, the one at the State Employment and Mr. Partin.

Q All right, and so when you asked the State Employment man if you could take the test again, he told you it would be two years. Then you went out to see Mr. Partin, and he told you the same thing?

A Same thing.

Q Is there anything that leads you to believe Mrs. Goings, you didn't get a fair chance when you took this finger test at the State Employment office?

Mr. Rachlin: That is repetitious, I object to that.

A Yes.

Q (By Mr. Deakins) What causes you to think that?

A Well at the same time there was, they wasn't hiring any colored and was hiring all white.

Q They hired a number of the colored people that took the test when you did, didn't they? You said six or seven.

A Yes, they was hired, but a lot more wasn't.

Q Well I am just talking about the test now. Do you claim that you weren't given a fair chance when you took the test?

A Yes, when I asked him could I take the test over and he said no, it would be two years, well that wasn't a fair chance again.

Q But as to the test itself, when you took the test did you feel like you didn't get a fair chance in taking it?

A No, when I take the test I felt like I passed, because the lady said I did well and I would get a card.

Q Do you think you were treated fairly by the people there?

A After she said that, I fkelt like I was treated fair.

Qf So as far as the test being given to you, you think you were treated fairly then?

A That's right.

Q But you don't think it was fair that they didn't let you take the test again?

A That's right.

Mr. Rachlin: I don't think that is a proper characterization of her testimony. You are putting words in her mouth. She says she was told she had passed, and I think we are having a hangup on words here. That's not right. You are putting words in her mouth.

Mr. Deakins: You can clear that up on your examination. I don't mean to mislead you on this thing, Mrs. Goings.

Mr. Rachlin: You have been going over this several times. On several occasions she told you she was told she was, had passed and you are going back over it again in the hopes of making hersay something difference. That is not right.

Q (By Mr. Deakins) You claim you were not given a fair chance about the test, you claim in that regard that they would not let you take the test again?

A That's right.

Mr. Rachlin: That is not her claim---

Mr. Deakins: Well let's let the witness testify, counsellor.

Mr. Rachlin: No, because first your questions are improper as to form, they are ---

Mr. Deakins: Well you should object counsell, rather than instructing the witness.

Mr. Rachlin: I am not instructing her at all.

Mr. Deakins: Yes, you are, you are giving her every answer. And it just so happens that she is giving different answers than you are.

Mr. Rachlin: No, she is not giving different answers, than I am.You are trying to write her testimony personally.

Q (By Mr. Deakins) Now I don't want to mislead you, I want you to answer my questions as truthfully as you can, and if you don't understand the questions I will rephrase it for you. But right now I am trying to find out why you feel that you didn't get a fair chance about this test, that is what I am concerned with.

A Because they wouldn't give it over to me again, that is the reason.

Q And that is the only reason?

A That's the only reason.

Q Have you ever been referred to any other employers or plants by the South Carolina Employment Security Commission, besides Campbell Coup Company?

A No.

Q How old are you at the present time, Mrs. Goings?

A About forty.

Q Your birthday is August 1st, 1926?

A 1927)I believe.

Q Is it August 1st, 1927?

A Yes.

Q Now were you ever given any sort of test by the people at Campbell Soup Company?

A No, sir, never have.

Q You never took thos Wonderlic test?

A No.

Q Were you ever given a physical examination?

A No.

Q Have you ever taken this Wonderlic test in support of your application for employment anywhere else besides Campbell Coup Company?

A No.

/Q How many years of schooling did you complete?

A I went through the ninth and a couple of months in the tenth.

Q So the nineth grade was the highwst grade you completed?

A That's right.

Q While you were in school, before you got to the tanth grade, did ever year you get promoted to ~~anteer~~ another grade?

A That's right.

Q You never failed a grade?

A No.

Q During the time you were in school, did you take courses in arithmatic?

A Yes.

Q English?

A Yes.

Q Spelling, writing and reading?

A Yes.

Q In these courses, while you were in school, were you given written tests?

A Yes.

Q Have you ever had any serious illness or injury?

A No.

Q Never received any disability payments of any kind for injuries?

A No.

Q Mrs. Goings, have you ever signed or filed any sort of charge or complaint saying that Campbell Soup Company has discriminated against you?

A Yes, I did.

Q I would like to show you a document which has been marked defendants' exhibit number 10 for identification, and ask you to look that over. You have had an opportunity to look that over?

A Yes.

Q Now does your signature appear on the first page of defendants' exhibit number 10, right here (indicating)?

A Yes.

Q Is that your signature, Annie Mae Goings?

A That's right.

Q Did you fill in the address 139 ~~Maxcy~~ Maxwell (?) Street?

A Yes.

Q That is your writing?

A Yes.

Q Now at the time you signed defendants' exhibit number 10, was all of the other writing above your name on the first page already written in? Was all of this above your signature already written when you signed your name at the bottom?

A I don't know whether all was written, I know it was some was written, but I don't know about all.

Q What appears on this page above your signature at the present time, does that appear to be what was written there before you signed it?

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A I say some was on there, but I don't know about all, down to my name.

Q Before you signed it did you read the things that were written above?

A No.

Q You didn't read the thing before you signed it?

A What you talking about before I sign my name on there?

Q Yes.

A Oh, yes, I did.

Q You read what was on the page before you~~xxigxd~~ signed it?

A Yes, I read a little bit, what was on there.

Q Does there appear to be anything on the first page above your name that is any different from what you read?

A No.

Q Now do you remember how many pages there were to this document when you signed it?

A No.

Q Do you know whether there were more than one page?

A I don't know, I didn't ~~beshter~~ bother about looking.

Q Were you at that time at a public meeting, when you signed it?

A Yes, a public meeting.

Q You notice on the second page that it is dated on October 4, 1966?

A Yes.

Q Was that approximately the date that you signed this document?

A I forget now what date, but I know I signed it. I don't know about the date.

Q Was it approximately October, 1966?

A It probably, I just don't know what date it was.

Q Do you recall it was in 1966?

A Yes.

Q Do you recall that it was in the fall of the year?

A In the fall, I don't know whether it was in the fall, probably so.

Q All right, at the time that you signed this document, did anybody ask you to raise your hand and swear that what you said was correct?

A No.

Q Nobody administered an oath to you?

A No, nobody.

Q Now you didn't write what is above your signature on the first page of this document, did you? It is not your writing, above your signature?

A No, just my name, that is my writing.

Q And that is the only thing you have written on there?

A Right.

Q Do you know who wrote the other part of this document?

A I do not know.

Q You know Mrs. Dorothy V. Sampson, the lawyer?

A I have seen her.

Q Was she at this meeting you were in?

A No.

Q You didn't see her at the meeting?

A No.

Q You know Reverend Lewis?

A Yes, I know him.

Q Was he at the meeting?

A No.

Q Did someone ask you if you wanted to sign this document?

A Someone ask me?

Q Yes.

A No, I just think it was right, so I just, you know, signed it.

Q I am sorry, I didn't hear that.

A I just thought it was right to sign, after the public sign it.

Q And you just read it and you knew what you were signing?

A Right.

Q Now before you signed it did you have any discussion with anyone there about what your complaints where?

A No, I did not.

Q After you signed this defendants' exhibit number 10, did you make the trip to Washington with the others?

A Never had been to Washington.

Q Besides defendants' exhibit number 10, have you ever signed or filed any type of charge or complaint against Campbell Soup Company?

Q Now Mrs. Goings, you claim that you have been discriminated against by Campbell Soup Company?

A Yes.

Q On what do you base that claim?

A Well, on the, um, the --

Q You ~~Yeau~~-claim you were discriminated against because of the grade requirement that they have out there?

A Yes.

Q And you have been more than eight grades in school?

Q Why do you claim the eighth grade requirement discriminates against you?

A I just don't know that.

Q Pardon?

A Just don't know that.

Q Is there any other reason that you have besides this eighth grade requirements for believing that Campbell Soup Sep has discriminated against you and against other negroes?

A It is some more but I just can't think now.

Q Take your time.

A I don't know any more than that.

Q Do you claim that Campbell Soup has treated you unfairly in any way by the way they check references?

A I don't know.

Q Well do you have any information which leads you to believe that they have discriminated against you and other negroes by the way they check references?

A Yes, I do.

Q All right, what do you base that on?

A Well, some, on the inside, the application you fill out, bow colored people they have "N", for negroes, and "W" for whites.

Q On the application?

A Yes.

Q Where did you get that information?

A That is on the application when you fill out one, from the State Employment.

Q I am not concerned with what the State Employment office does, I am talking about what Campbell Soup Company does. Do you have any information that the Campbell Soup Company uses any letters to identify negroes and whites?

A Any letters?

Q Yes, you were talking about "N" and "W" put on the applications.

A Yes, that's on those um, blanks, when you fill them out, at the Empooyment office.

Q I am not talking about the Employment office. You were referred out to Campbell Soup by the Employment office, weren't you?

A I was sent out there.

Q Well do you have any information which leads you to believe

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that Campbell Soup Company makes any sort of notations about whether a person is negro or white?

A No.

Q I show you your application for employment here, which is defendants' exhibit number 15 --

Mr. Finney: It is stipulated that there is no "N" or "w" on there or any other indication that we are aware of on the application.

Q (By Mr. Deakins) Well now let me ask my question again, because I want to explain to you that I am not at this point interested in what the State Employment Service does, or whether they discriminated. I am only interested in whether Campbell Soup Company discriminated against people because of race. Now do you have any information to your knowledge which leads you to believe that Cambell Soup Company discriminates against you or aggint any other nggro by their reference checking, the checking of references?

A I don't know.

Q You don't know of any information?

A No.

Q Do you have any other information or knowledge ---

A No.

Q Now let me ask my question, and be sure you understand my question. Do you have any other information or knowledge of any kind that leads you to believe that Campbell Soup Company

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discriminates against you or other negroes, other than this eighth grade requirement that you mentioned?

A I don't know.

Q You don't know of any such information?

A No.

Q You mean by that that you don't have any such information?

A No.

Q You do not have?

A No.

Q How did you learn that Campbell Soup Company had an eighth grade educational requirement?

A In the papers.

Q In the newspapers?

A Yes, television.

Q All right, and you read in the newspaper and heard on the television that they, you had to have an eighth grade education to get a job out there?

A Yes.

Q Do you recall approximately when it was that you read it in the newspaper or saw it on television?

A No.

Q Do you know anything about this Wonderlic test?

A No.

Q That Campbell Soup Company uses?

A No.

Q You don't know anything about that?

A No.

Mr. Deakins: I think that is all.

EXAMINATION BY MR. RACHLIN

Q Mrs. Goings, I want to see if you can clear up some of this, maybe I am the only one confused and you can clear me up. As I recall when Mr. Deakins asked you, you said the finger test, you took the finger test about March 4th?

A Yes, I take that on March 4th.

Q Now right after you passed the test, did you see the lady there from the South Carolina Employment?

A The lady was in there when I take the test.

Q And she spoke to you?

A Yes.

Q Tell me what did she say to you and what did you say to her?

A She asked me had you had the test before. I told her no, I had never had it before. And she say you did well, I will receive a card in the mail, and I never did receive a card in the mail. So after she told me that I checked back about two months later.

Q And you spoke to somebody else this time?

A Yes, a man. And he get mine out the file and he looked on it, and he said I just lacking one fraction from passing the test and he say he could not send me over to Campbell to work.

Q But he did give you an application form?

A And he give me another one, he pull out another one and give it to me and told me ti fill out that and take it to the plant, and I did.

Q Who did you see at the plant?

A I give it to a lady there and she loo d on it and I asked this lady, may I speak to Mr. Partin. She said he was busy but he will see me in just a minute, to have a seat. And so about fifteen minutes he came out and I talked to him about it.

Q Did you tell him about what the lady had said to you on March 4th, that you had passed?

A Yes, I did.

Q And what do you say he told you?

A And he look atthe application, he put it down and he said well it would be two years before anybody could take this test again.

Q Did you think that was fair, on his part?

A No. And I walked out, I tell him thank you and walked out.

Q And, and you never heard from anybody after that from Campbell Soup Company?

A No, never did get a card nor nothing from anybody.

Q Now your application,, I think said you went to the, er, now Mrs. Goings, you went to the Manning grade school, is that correct?

A Manning Training School.

Q And you finished your ninth and had a part of your tenth, is that right?

A Yes, a couple of months.

Q What month of the year did the school start, do you recall? Was it in September, October, November, when was it? Was it before or after cotton picking?

A Yes, before. No, around September.

Q Were there any white children in your class?

A No.

Q Did the white children start school earlier than you did?

A Yes.

Q And did they go to school longer than you did?

A Yes, they did.

Q Now in your, now Mr eakins asked you whether you had studied English in school.

A Yes.

Q In your study of English in your school did they teach you the meaning of the word dubiousness? You know what dubiousness means?

A No.

Q Did they teach you the meaning of ~~assuredness~~ Sureness?

A No.

Q Did they teach you the meaning of immaculate?

A No.

Q You know what incorrupt means?

A No.

Q You know what classical means?

A No.

Q You know what explicit means?

A No.

Q You know what aloof means?

A No.

Q You know what contradictory means?

A No, sir.

Q Those words weren't taught you in school?

A No.

Q And you know what miner (m-i-n-e-r-) means?

A No.

Q Have you ever been called back either by Campbell Soup or by the South Carolina Empoyment to take the finger test again?

A No, sir.

Q You have not heard from anybody about that again?

A No, sir.

Q And nobody at Campbell Soup came and, or wrote you or told you to take the test again?

A No.

Q Now what are you, you say in your application that you were layed off in the McDaniel grocery store, for what reason?

A Because business was slow.

Q Where have you been working, have you been working since you left McDaniels?

A No.

Q You have not had any work since then?

A No.

Q Could you describe for us the lady who told you at the South Carolina Employment that you had done well on the finger test? What did she look like, do you remember?

A She was kind of a tall, not too stout.

Q Was she young, middle aged or ---

A Middle age.

Q About how oldwould you say, approximately?

A Well, I don't know how old she was.

Q Approximately.

A Oh, she looked to be in her forties.

Mr. Rachlin: No further questions.

EXAMINATION BY MR. DEAKINS

Q Now Mrs. Goings, as I understand it, correct me if I am wrong, but when you went out and filed your application at the Campbell Soup Company, you had already talked to the man down at the South Carolina Employment Security Commission?

A Yes, sir,

Q Now, and when you went out and filed this application at the plant you talked to Mr. Partin.

A Yes, sir.

Q Did you tell Mr. Partin what the man at the employment agency had told you?

A Yes, sir.

Q Did you tell him that he had told you that you couldn't take this test again for two years?

A Yes, sir.

Q Was that after you told Mr. Partin, that he told you that you couldn't take it for two more years, that Mr. Partin then told you you couldn't take it for two more years?

A The one down at the State Employment told me first.

Q And when you went to talk to Mr. Partin, you told Mr Partin that the man had told you cou couldn't take it for two more years.

A Yes.

Q Now did Mr. Partin make any statement to you about two years?

A Yes, he looked on the blank, and he say nobody couldn't take that test mo more in two years time.

Q All right, but this was after you had already told Mr. Partin that this, this is what the man at the State Employment office had told you?

A Yes.

Q Did you tell Mr. Partin anything about what the lady at the State Employment agency told you?

A Yes, I told him the lady said I did well, and I must have had this test before. Mr. Partin told me, did I ever receive a card in the mail. I told him no, I never had receive a card, and he said well if I don't, didn't receive a card ain't bothing he could do.

Q Ok, but you told Mr. Partin what your conversation was with the lady and with the man at the State Employment agency?

A Down to the State Office, yes.

Q Now I want to go back over briefly with you your conversation with this lady at the State Employment agency. Now didn't she ask you whether this was the first time you had taken this test?

A I don'w know what she was talking that morning, it was a group of us, I don't know.

Q Just tell me what the lady at the Employment agency told you, again.

A What she told me? Well we was taking the test, you know, she time me by the ~~xxx~~ clock and she asked me, when she take the seat, she told me, she say oh, you must have had this test before. Itold her no. And she said you are doing well, you qualified.

Q That was during the time you were taking the test?

A That was while I was at the table taking the test.

Q And after you finished the whole test did you have any conversation with the lady, or was it during the time you were taking the test?

A No, I didn't have none after. She said you did well and you ~~xx~~ will receive a card in the mail.

Q Let me understand you now, you had some discussion with this lady while you were in the process of taking the test?

A That's right.

Q What did she tell you while you were taking the test?

A That I must have had the test before, and I told her I never did.

Q And she said you are doing well?

A Yes.

Q All right, now that was while you were taking the test?

A Yes.

Q After you got through with the test did you have any further discussion with the lady?

A Yes, I asked her for my card then, and she said no, she won't give it to me, I will receive it in the mail the, in a weeks' time.

Q All right, this was what she said to you after the test was over?

A Yes.

Q Did she say anything else to you?

A No.

:Q At the time you were taking this test was she writing anything down? When she came around to you when you were taking the test, was she watching what you were doing?

A Yes, she was.

Q Did you notice whether or not she was writing anything down?

A No, I didn't. I had my mind on the test and I couldn't be watching her and doing the test too.

Q When you talked to her after you finished the test and she told you you would receive a card within a week?

A That's what she said.

Q Did you notice whether or not she was looking at anything at that time?

A No, I don't know whether she was looking at anything or not.

Q Was there any delay from the time that you finished the test, until the time she told you you would receive your card in about a week, was there any delay in the time there or did she say that to you right as you finished the test?

A Um, just before I finished the test, that's when she said, just before she times us by the clock.

Q Just before she said time is up?

A That's right.

Q That is when she said you would receive a card within a week?

A That is when she said I doing well.

Q Well when did she tell you you would get a card within a week?

A Just before I leave from the place, I asked her for my card, and she said you will receive one in the mail, she won't give it to me, everybody would receive it in the mail, and I would receive one in a weeks' time.

Q Did she say everybody would receive one in a week?

A Yes, they wasn't giving nobody no cards, at the present time.

Q Now were you standing in the group when she made the statement, you would receive a card within a week?

A Yes, all was standing in a grpup.

Q And was she talking to all of you when she said that?

A No, I kent up and asked for mine and she said no, she don't give nobody no car, you will receive it in the mail.

Q Were there other people who took the test standing there at the time?

A Yes, hearing what she said.

Q Was she just speaking to you or ---

A Yes, just to me, because I asked for mine.

Q Now as I understand it this manural dexterity test, or what you call the finger test, is given in two parts, isn't it?

A Yes, it is givgn in two parts.

Q And the lady administers one part and then a man administers the other?

A Yes.

Q Isn't it correct that you took the part that the lady gave you first and then you took the part the man gave?

A Yes,go in another part and take the man.

Q Did the man that gave you the second part of the test say anything about how you were doing?

A Yes, he say everybody done well this morning.

Q Was he talking to ---

A Me and everybody else what took the test.

Q ~~Dud~~ you didn't have any discussion with him particularly?
But

A No, I didn't had no discussion with him.

Q Then it was after you completed the part that the man gave you that you had your discussion with the lady again, and she said you would receive a card in a week?

A Yes, I thought I could get it right then and I asked for it.

Q Well, how soon after you finished the part of the test that the man gave you was it before you had this last discussion with the lady before you left? Was it as you were finishing up?

A Yes, sir, after we finished up.

Q There wasn't any delay?

A No.

Q Was the lady, would she have had time to have had any discussion with the man before you talked to her?

A No, she didn't.

EXAMINATION BY MR. RACHLIN

Q When you spoke to Mr. Partin, did you ask him to help you, or take the test over again, to prove you could pass it?

A No, I didn't.

Q What did you ask him to do for you? Did you ask him to give you a job?

A Yes, that's right, did he have any jobs available.

Q Did you tell him you could do the finger test?

A Yes, sir.

Q Did he offer to check with the State mployment to find out what the mix-up was about?

A No, he did not.

Q Now when you finished the part of the test that the lady gave to the people who were there, did you go to another room, or was the test given in the same room that the man gave?

A No, sir, went to another room.

Q And you took, how long did the part take that the man gave, approximately?

A Well it didn't take quite as long with him as it did with the lady.

Q And then how did you happen to go back to see the lady afte you finished the second part?

A Everybody was getting ready to leave out to go and I went to her and asked for the car, and she say she don't give anyon the cards, she will send them out in the mail.

Q Now when all of you were talking to the man after you finished the second part, you say he said you all did well?

A Yes.

Q Had he looked the tests over?

A Yes, he looked it over.

Q And he said all of you had done well that morning?

A Yes.

Q And the lady had said you had done well too?

A Yes, sir.

Mr. Rachlin: No further questions.

EXAMINATION BY MR. DEAKINS

Q All right the man made the comment, as I understand it, that everyone was doing well this morning?

A Yes.

Q Was this while the test was being given or after it was over?

A After it was over.

Q How long did the test take that the man gave?

A I don't remember that, I don't believe that last quite thirty minues, but the lady own did.

Q A little less than thirty minutes?

A Yes.

Q Now I don't want to confuse you but I want to try to understand what this lady said to you right before you left.

A Right before I leave?

Q Yes, she didn't make any personal reference to you, did she? Didn't she say --

A No, I went to her and asked her for my, mine personally, and she said she don't give no cards, she will send them in the mail in a weeks' time.

Q All right, now was that your best recollection of exactly what she said?

A That what she told me.

Q Have you ever asked anyone at the company to take the manual dexterity test again?

A No, I never did.

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Q Now it is my understanding that you have not worked anywhere since you worked at McDaniels grocery?

A No.

Q And when did you leave there?

A When I was taking that test.

Q And you have applied at Campbell Soup Company?

A Yes.

Q And you applied at Exide Battery?

A Yes.

Q Have you filed any other applications to get employment anywhere else?

A No.

Q When you were in school did you learn the meaning of words?

A The meaning of what?

Q The meaning of words in school, did you study what words meant?

A Yes.

Q You never heard of a miner, m-i-n-e-r?

A No, it been a long time.

Q What do you call a fellow that mines coal?

A when you mine, for xxxx coal?

Q Yes.

A That is nothing but a miner right there.

Q That is a miner, isn' it?

A Right.

Q You know what he is, don't you? Do you recall the words you leavned in school? You recall all the words you learned in school?

A Did I call them all?

Q Do you remember all the words ---

A Oh, no.

Q So you can't really say whether or not you learned these words your lawyer talked about or not?

A Right.

Q You don't remember now, do you?

A No, I don't think I leanred them.

Mr. Deakins: No further questions.

MRS. BEULAH RHODES

was duly sworn and testified as follows:

EXAMINATION BY MR. DEAKINS

Q Mrs. Rhodes, are you married?

A Yes.

Q Did you ever file an application for employment with Campbell Soup Company?

A I did.

Mr. Deakins: I ask the Reporter to mark this document as defendants' exhibit number 16 for identification.

(Document referred to is received as defendant's exhibit 16 for identification)

Q (By Mr. Deakins) Mrs. Rhodes, I would like to show you a document which has been marked as defendants' exhibit number 16 for identification, and I ask you to look that over please. Is that the original of the application that you filed with Campbell Soup Company?

A It is.

Q Is this the only application for employment you have ever filed with Campbell Soup Company?

A No.

Q How many applications have you filed?

A I filed two, one with the employment office.

Q All right, you gave that one to the State Emploument people, didn't you?

A That's right.

Q But as far as filing an application with the people at Campbell Soup Company, defendants' exhibit number 16 is the only one you have ever filed?

A Yes, sir.

Q Now it is stated, the date that is written in this application is 5-20-1966, which would be May 20, 1966. Did you fill that date in?

A No.

Q That is not your writing?

A You talking about, oh, yes, all the pencil writing is my writing. but no ink.

Q So you wrote the date down there, 5-29-1966?

A Yes.

Q Is that the date you filed this application?

A Yes.

Q You did not write anything on this application which is written in ink, is that right?

A No.

Q You notice up in the far lefthand corner, the word "fair" Hyphen "good", you did not write that in?

A No, I didn't.

Q Now at the time you filed this application did you have any discussion with anyone out at Campbell Soup?

A I did.

Q And who was that?

A Mr. Partin.

Q That is Mr. Wayne Partin who is sitting here in the room with us?

A Yes.

Q During that discussion did Mr. Partin ask you for your address?

A No, he just read over the questions and he went through it.

Q Well did you notice that Mr. Partin was writing on your application when he was talking with you?

A I did.

Q I notice that your address is written in in blue ink, are you sure you didn't tell Mr. Partin your address?

A No, I didn't.

Q Mr. Partin, did he ask you questions about statements on this application?

A Yes.

Q All right, did he, I notice where you have the statement, have you ever been arrested, you put yes in pencil, is that your writing?

A Yes.

Q Did Mr. Partin ask you what you had been arrested for?

A Yes.

Q And did you tell him?

A Yes.

Q What did you tell him?

Mr. Rachlin: We object to that question, irrelevant.

Q (By Mr. Deakins) What did you tell him?

A I told him my husband had some white whiskey in the house and he had went fishing, someone told the police he had it there and the police come and picked me up and carried me to jail.

Q And did Mr. Partin write someting on your application at the time?

A Yes, he did.

Q Now I notice that on the reverse side of this application, Mrs. Rhodes, the name Beulah Mae Rhodes is written in in blue ink.

A Yes.

Q Is that your signature?

A That is.

Q Ok, but you didn't write any of the other things that are written in blue ink?

A No.

Q Now Mrs. Rhodes, in filling out this application, or the statements that you made, are the statements you made on the application true and correct to the best of your knowledge?

A Yes, it is.

Q Now after you filed this application you discussed with Mr. Partin at that time /the application itself?

A Yes.

Q Did you discuss anything else with Mr. Partin at that particular time?

A No, I didn't.

Q After you filed your application I believe that you were, you later came in and took a test, is that correct?

A I did.

Q Now between the time that you filed your application and the time you took this Wonderlic test out there, did you have any other discussions with Mr. Partin or anyone else at Campbell Soup Company, in between that time.

A I did.

Q All right, who did you talk to?

A Mr. Partin.

Q On how many occasions?

A Well I can't say exactly but I know definite I had three, when I was alone by myself.

Q Now were all three of these conversations now before you took the Wonderlic test?

A Two before I took the Wonderlic test.

Q And one after?

A Yes.

Q Now let's concentrate on those two conversations before you took the test, they were both with Mr. Partin?

A Yes,

Q When did the first one occur?

A In June.

Q In June. All right, tell me the circumstances, where you were, were you at the plant?

A I was.

Q In a private office?

A I was.

Q What was the occasion now for you to be out there?

A Because I wanted the work.

Q Did you ask to see Mr. Partin?

A I did.

Q And then you all had this conversation in this private office?

A Yes, sir.

Q All right, tell me what was said in that conversation.

A Well he asked me what did I want. I told him, he said what I wanted to see him about, and I told him I wanted to know if he had an opening for any job, because I wanted to work, and he said well at the present time he didn't have any opening right now, and um, he said when I get a opening I will let you know, so I asked him, I said, why are you hiring people that put in applications since mine, I asked what was wrong with my application. He stood up and said Beulay, we don't hire first come first served, he said I pick my applicants, and anybody that want an application, for ladies, I give my file and they pick who they want, and with that he sit down.

Q All right, do you remember anything else he said?

A Yes, when I went to walk out, he said any time you want to talk with he you come back. I said yes, sir, I will be back, I said because, Reverend Lewis said, we had had a meeting and made our complaints, and they had had a ~~my/~~ meeting with them before.

Q Who had had a meeting with who?

A We had had a meeting because we was not getting on, and we was disturbed, didn't know what was wrong, we was not being called in. We had put in our applications, some of us, before the plant ever been built. And then they had been told, Reverend Lewis and others had been told --

Q Well I am not interest in what they were told.

A Well they told us, you want to know what they told us?

Q Who?

A At the meeting.

Q No, I am not interested in the meeting right now. There weren't any Campbell Soup people at that meeting?

A I don't know.

Q But you attended a meeting with Reverend Lewis and others before this conversation with Mr. Partin?

A Yes.

Q All right, but do you remember anything else that was said in this meeting with Mr. Partin when he said we don't hire people on a first come first served basis?

A He told, I said I will be back, he called me back and said Buelah you will get a hearing from me by the 15th of July, no less than the first of August. And then I left.

Q All right, then you had another discussion with Mr. Partin before you took the Wonderlic test?

A I did.

Q When was that?

A This was sometime after, I don't know if it was the first week in August or later, but it was in August.

Q How did that meeting come about?

A Well I had been trying to get in touch with him over the telephone and I couldn't, and I went in person.

Q Did you meet with Mr. Partin then?

A I did.

Q In the private office?

A Yes, sir.

Q Tell me what the discussion was then?

A Well I went in the office, Mr. Partin said to me, said Beulah what can I do for you today. I said Mr. Partin I still want a job, and, um, he say I am sorry Ø I don't have any opening. I say any kind, I say I want work. And he said I am sorry but I don't have no opening. And I kay you told me that I would get a hearing from you around the 15th of July to the first of August, and he say no, I didn't tell you that, I don't tell anybody such things. And I repeated it to him, I say yes you did, and he said well it must have been some misunderstanding. And I said that was your words to me and what I was depending on, and he went on then, asked me several questions.

Q What type of questions?

A He said me, well you see, he asked me a question and I ask him a question, he said you would have to have, see I knows that um, he said I know that colored people haven't had the opportunity to have good jobs in the past, but he say at the present time I feel sympathy for them but nothing at the present I can do. He said um, and as soon as I get an opening I will call you. I asked him what was wrong with my application, he said Beulah you have first to be qualified. I said what do I have to do to be qualified, and he said you first have to pass this Wonderlic test. And I say how do you know I am not qualified when you won't come in and give me this Wonderlic test. He said first you have to have a physical examination. I said how do you know I won't pass the physical examination when you won't call me for the Wonderlic test. He threw up his hands and sat and said Beulah, say if I could hire any one person, I would walk out that gate and hire me sixteen hundred head of people and get this thing over with. He said but I don't have the authority, to hire anyone, and I said, may I speak to the manager, and he say he was sorry he was out of town.

Q Anything else said during that discussion?

A No, sir.

Q Then after you took the Wonderlic test, you had another discussion with Mr. Partin?

A That's ttue.

Q And when was that discussion?

A This discussion was in his office after I took the test.

Q Was it the same day you took the test?

A The same day.

Q Was that when you went over the test with him?

A When he explaind the test to me?

Q Yes,

A Yes.
Q Was that the conversation you are speaking of?
A Yes.
Q So those were the three conversations you had with Mr. Partin after you filed your application?
A Yes.
Q Did you have any other discussion with Mr. Partin other than those discussions?
A Not with him.
Q Did you have any discussions with anyone else at Campbell Soup Company?
A After the test? Then I --
Q At any time.
Q Not until I went for the physical.
Q Pardon?
A Nor with the personnel manager.
Q Well with anyone at Campbell Soup.
A With the doctors.
Q Oh, well besides the doctors, did you talk to anyone else at Campbell Soup Company?
A Not personally by myself, no.
Q Well, in a group, did you?
A Yes, we was out there in a group before I had any of the tests.
Q Pardon?
A I say we was there in a group before I had any of the tests.

Q When were you out there in a group?

A It was either the last of August or the first of September.

Q You went out to the Campbell Soup Company in a group?

A That's true.

Q Who were you going out there with?

A Reverend Lewis, Mr. Robert ________________(?), and Mr. Parham, and I don't know who else, it was some more

Q Approximately how many people were there with you?

A It was about thirty.

Q Who did you meet with?

A They had a conference with Mr. Partin and I don't know the other man, what his name is, but this is the man here.

Q The man sitting next to me?

A Yes.

Mr. Deakins: We will stipulated that is Mr. Dick Gwozdz.

Q (By Mr. Deakins) Anyone else present?

A Only the ladies in there?

Q Well Mr. Gwozdx was present and Mr. Partin was present?

A Yes.

Q When was this meeting?

A It was either the last of August or the first of September.

Q Now did you do any talking during the meeting, or did Reverend Lewis do all the talking?

A No, we don't know what was said betwee, all I know is what these two said when they come to us.

Q I am sorry, I didn't understand you.

A They had a conference, Reverend Lewis and these men, Reverend Lewis and his secretary, Mr. Roberts and Mr. Parham. What was said in that meeting I don't know, all I know is what they said when they come back to us.

Q These two men?

A Yes.

Q You had a discussion with Mr. Partin and Mr. Gwozdz after the private meeting with Reverend Lewis was over with?

A No, they didn't we had no instructions, they come back and made a promise ---

Q Oh, I am sorry, who did the talking at that time?

A Mr. Partin talked and this gentleman here.

Q Mr. Gwozdz talked to?

A Yes. What did Mr. Partin say?

A They said they was going to start calling in twenty negroes applicants, on ;Tuesdays and Thursdays, which would be forty negroes a week, and them them the test.

Q What else did they say?

A Well I don't know what they said in the conference.

Q I am not talking about the conference, I am talking about what did they say to the group you were in.

A Just aid they would call them in and give them this test and we could be looking to get a hearing from them.

Q Did they say anything else?

A No, we just left, looking to get the hearing from them.

Q All right, now tell me who all was present besides Mr. Gwozdz and Mr. Partin and yourself, when these statemnts were made about calling twenty negroes a week?

A Mr. Parham, Reverend Lewis, I don't know who all it was.

Q Would that be James Parham?

A That's true.

Q Anyone else you remember by name?

A I can't remember any more by name.

Q Ok. Now aside from those conversations you told me about did you have any other conversations with any representative of Campbell Soup Company, other than the ones we have discussed?

A No.

Q Now in your answers to interrogatories which you signed and your attorney filed in this case, you made the statement, I was promises I would be called for work. Now I want to know whether or not that was said to you by any representative of the company, and if so, who it was.

A Mr. Partin.

Q When did he tell you that?

A When I was down there in, um, the first meeting, which was in May I believe it was, he told me I would be called to work whenever he get an opening, and he never did.

Q Was this when you filed the application?

A That's true.

Q And then you say, I was promised a hearing by August, 1966.

A Yes, that was after he had put in this here test, the first meeting he never mentioned any test. He, there was no test given in the beginning.

Q All right, but you mentioned earlier that he said you would get a hearing in July or August?

A That's true.

Q You say in your inteerogatories I was promised a hearing by August, 1966.

A Yes.

Q Is that more accurate?

A He said the 15th of July or first of August.

Q All right, can you remember anything else was, that was s aid by Mr. Partin in yo ur discussions with him?

A What you mean?

Q Any meetings with Mr. Partin, do you remember anything else you have not told me already?

A I don't understand your question.

Q Well you have tried to tell me everything that Mr. Partin has said during these various meetings you had.

A Yes.

Q Now my question is can you think of anything else he may have said other than what you have told me.

A Yes, sir, in the last meeting I nad with him he also mentioned to me, what was Reverend Lewis doing in the community --

Q What was what?

A What was Reverend Lewis' activities in the community, and what was he planning to do next.

Q All right, anything else? What did you say?

A I told him I didn't know, and he asked me how did the negroes feel about it, and I told him I don't know, I could only speak for myself.

Q Anything else?

A He told me to come in Monday at two o'clock to see the doctor about an examination.

Q This was after you had taken the Wonderlic test?

A Yes.

Q Now no one xxx at Campbell Soup Company ever told you your application had been lost?

A No, they did not.

Q I notice in your interrogatory you make the statement, I was told the company had lost my application. Do you have any information as to that?

A Yes, I was told by the Government, there was no application for Campbell Soup Company.

Q No one of the company ever told you that?

A No.

Q And the application I have shown you, defendants' exhibit number 16, that is the application you signed and filed?

A Yes.

Q So you were never told by anyone with the company that they had lost your application?

A No,I was not.

Q I notice on your application, Mrs. Rhodes, you list only one employer for whom you worked?

A Yes.

Q And what is that name?

A That's Linda Culick.

Q You still work for that same person?

A Yes.

Q Under the category, reason for leaving you put, she stopped working.

A Yes, and went to work for Campbell, at this time she was not working, so when she went to Campbell I went back to her.

Q Oh you mean you, the person you worked for works at Campbell?

A She was.

Q What did she do out there?

A I know she worked, she isn't working there now.

Q Do you have any information that would lead you to believe that she would give you a bad reference?

A No.

Q Now you say in case of emergency notify Ed Rhodes, who is that? That is your husband?

A Yes.

Q You have no reason to believe your husband would give you a bad reference?

A No.

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Q All right, under personal references on the back side of your application, you give the name, Mrs. Oretta Rembert?

A Yes.

Q Who is that?

A That is a friend.

Q You have no reason to believe she would give you a bad reference?

A No.

Q And you also list as a character reference, Mack Supermarket.

A Yes.

Q What is your relationship with them?

A I used to trade with them.

Q Do you have any reason to believe that the people over there would give you a bad reference?

A No.

Q And another character reference you give Home Furniture, what is your relationship to them?

A We used to buy furniture from them.

Q Do you have any reason to believe that the people at Home Furniture would give you a bad recommendation?

A No.

Q Have any of these people whose names are listed on your application, ever told you or given you any reason to believe that they had given a bad recommendation to Campbell Soup about you?

A No.

Q Do you have any information that Campbell Soup has ever obtained any bad recommendations, or references for you?

A No.

Q Do you have any information that Campbell Soup has ever run a reference check on you of any kind?

A No.

Q You state in your answers to the interrogatories, I also feel the references were unfair. Now what is there about the references that you feel are unfair?

A Because, I don't think they should ask for references, if you have not had, in other words in South Carolina, no negro women been working in the plants, and, therefore you know they been doing domestic work, so I don't see where references is fair.

Q Well now let me see if I understand you. I am not trying to lead you to admitting something you don't want to, but are you saying that what is wrong, or unfair about the references, is that they are unfair for negroes because negroes don't have references of previous employment?

A I wouldn't consider myself as a, um, for reference because, the work in these houses, domestic work, I don't think that is worthwhile for putting on an application.

Q You don't think it is worthwhile?

A No.

Q Why?

A Because they know that is the only work we ever did.

Q Well you don't consider you would get a bad reference, do you?

A Oh no, I don't think I would get a bad reference, but it is not necessary, why put it on there, because they know that is all we ever done.

Q You think it wouldn't be a good reference, because it is not the same kind of work you would be doing at the company?

A Yes.

Q You claim that the references were unfair because negroes haven't had good previous employment?

A That's true.

Q Is there any other way you feel that the references were unfair?

A Not that I think right now.

Q Well just stop and think about it, any other way you think the references were unfair, other than what you just said.

A Well I can't think of any now.

Q Now you have mentioned a meeting that you attended with Reverend Lewis before you went out to see Mr. Partin.

A Yes.

Q Now when was that meeting held?

A Well I don't know definite when, it be so many public meetings, read them in the paper, public meetings, at churches, difference places. I don't remember now when it was

Q You know which meeting we are talking about though, the

one you mentioned just a little while ago, you said you had a meeting with Reverend Lewis and others before you went out to see Mr. Partin?
A Yes, we asked them for help, and got it.
Q You asked Reverend Lewis?
A That's true.
Q But you don't remember when that was?
A No, not exactly.
Q What did you ask Reverend Lewis to do?
A We asked them to help us get jobs because we needed their help because we was not getting work and these other white women leaving these other plants and going to Campbell Soup Company and getting on, leaving a good job, going to another job when we couldn't even get a job.
Q And you made a request to them, who else did you make the request to besides Reverend Lewis?
A I don't remember, Mr. Parham, this gentleman sitting there, I don't know who all, just a crowd of them. In other words the public called a meeting asking for help.
Q Were there any other occasions where you visited with representatives of Campbell Soup Company along with Referend Lewis, excpt this one occasion?
A That is the only one.
Q Now I believe you have already testified that this application, which is defendants Exhibit number 16, is the only application

you filed at the plant?

A That s true.

Q And that one was filed on May 20th, 1966?

A I guess so, I don't remember the date.

Q You didn't file any other application with Campbell Soup in August of 1965, did you?

A No, I didn't.

Q You filed an application with the State Employment office sometime?

A Yes.

Q You gave that to the State Employment office?

A That's true.

Q Now Mrs. Rhodes, other than appliying for a job at Campbell Soup Company, have you ever applied for a job at any other plant or factory?

A Yes, I have.

Q Where else have you applied for a job?

A Williams Furniture and Korn Instrties and Pioneer Dress Shop.

Q Were you ever offered a job with either one of those companies?

A No.

Q Did either one of those companies, did you file writtten applications with those two companies?

A Yes.

Q Approximately when was that?

Mr. Rachlin: We object to any questions about other employers, it is not involved in this case, and what any other employer did or didn't do is irrelevant.

Q (By Mr. Deakins) When did you file those applications?

A I filed application with Williams approximately a month ago, about three weeks before Williams had their vacations, I filed application with them.

Q At either one of those places did you take a physical examination?

A No.

Q Were you given any written tests?

A No.

Q Now when you went out to Campbell Soup to file this application were you referred by the State Employment office?

A I was.

Q Did you ask the State Employment office to send you out there or did they volunteer to send you our there or suggest that you go out there? Who sugested that you go out there?

A I went ans asked, I asked. The first application that I put in was 1965 --

Q With the State Empooyment office?

A That's right. I went there to put in a application for the Battery, the Exide Battery had a add in the paper for trainees to meet at the employment office. Well I went, but after we got there we was told that the battery was something, they was hiring no ladies, it was all men, and they had no work for ~~xkx~~ ladies. But they said all of you all come on this side over here and fill out application for Campbell Soup Company, and it was some man there, I don't know him if I ever see him again, but he was working with them, he say anybody can read and write can work with Campbell.

Q Is this somebody at the State Employment office?

A That's true he kept saying it over and over, anybody can read and write can work for Campbell.

Q So the State Employment office referred you to Campbell?

A That's true.

Q Now before you filed your application at Campbell Soup Company in May of 1966, were you given this finger test, or manual dexterity test?

A Yes.

Q Did you ever receive a postcard after that from the Employment agency?

A Yes, I did.

Q Did you deliver that to Campbell Soup Company?

A I did.

Q Was there anything about the way that the State Employment Service gave you the finger test that you thought was unfair to you?

A No.

Q ~~Anxy~~ Anything about the test that you considered to be unfair to negroes?

A. NO.

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Q Do you have any relatives that work for Campbell Soup?

A No.

Q Do you have any friends that work out there?

A Well, I know them, I don't know if they friends or not.

Q You do know some people that work out there?

A Yes.

Q How many do you know?

A Oh, I don't know.

Q Approximately how many?

A Well I don't know that either, I just know some that works there.

Q You know as many as twenty people that wrk out there?

A No.

Q As many as ten?

A Approximately I guess.

Q Are they all negroes?

A Yes.

Q Now Mrs. Rhodes, how many years of schooling have you completed?

Q I completed the ~~km~~ eighth grade.

Q Did you start the ninth grade?

A I took a night course at Lincoln High School in 1965, I believe it was, a three year --

Q You completed eight years of public school and in addition you took a night course at Lincoln?

A Yes.

Q So you actually had nine years of school?

A Yes.

Q In your public school work did you ever flunk a grade or did you progress a grade every year?

A I did.

Q You progressed a grade every year?

A Yes.

Q What is your birthday?

A May 19th.

Q You were born in 1929?

A Yes.

Q Now Mrs. Rhodes, as I understand you took the Wonderlic test out at the plant?

A That!s true.

Mr. Deakins: I would like to ask the Reporter to mark this document as defendants' exhibit number 17 for identification.

(Document referred to is received as defendants' exhibit 17 for identification)

Q (By Mr. Deakins) Now before you took the Wonderlic test were you notified by the company to come in and take it?

A I had called and asked could I take it.

Q Whom did you talk to?

A I finally was able to catch up with Mr. Partin.

Q Was that in one of the discussions you have told us about?

A No, I was calling by telephone.

Q And you asked Mr. Partin if you could take the test?

A I called him and asked if he have a job opening, and he said Beulah, he say didn't you tell your, um, friend, I can't say what you all say, the finger test I say, and he asked me didn't I fail that, and I told him not I didn't, and he say, you come in tomorrow and I will give you the test.

Q Did you have any other telephone conversation with Mr. Partin besides that one?

A No.

Q And then did you come in the next day and take the test?

A I did.

Q Who gave you the test?

A A little lady gave me the test, in a office off from Mr. Partih's office, and set a time clock in there and told me to turn it upside down and told me not to check it but to read it, and she say when she come back turn it over, and she come back and brought me a pencil and asked if I had read it, and I said yes, and she told me to turn it over and I began.

Q And you worked on the test until the buzzer went off?

A Until she came back, I didn't heard no buzzer.

Q Were any other people taking the test at the same time you were?

A No.

Q You were the only one?

A That's true.

Q And some lady gave you the test?

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A Yes.

Q Do you know her?

A No.

Q Can you describe her for us?

A No, I can't do that either.

Q Was she one of the ladies in the personnel office?

A That's right.

Q Well, now let me be sure I understand. I want to show you defendants' exhibit number 17 and ask you if you can identify that document.

A Yes, my name, my writing.

Q Did you write your name on the first part of that exhibit?

A I did.

Mr. Finney: We will stipulate that is her Wonderlic test.

Mr. Deakins: Yes, we will stipulate that this is the original of the Wonderlic test taken by Beulah Rhodes, and that the date stated thereon is the date she took the test.

Mr. Finney: And that she made the marks where the answers are stated and that she did not that she did not make the X's and the check marks.

Mr. Deakins: Yes, we will stipulate that.

Q (By Mr. Deakins) Now Mrs. Rhodes, before you actually, when the woman came in and told you to, first of all gave you instructions about the test, didn't she, before you started it?

A No, she asked me could I read.

Q And you told her you could?

A Yes.

Q And then did she ask you to read the first page?

A No, she turn it upside down, what I had was turned over.

Q This white page?

A The instructions was on the back, what I had, what she gave me, the instructions, she had it turned over and told me not to turn it over until she come back.

Q Well the page you saw though, at that time had printing on it?

A That's right.

Q Isn't that the side you put your name on?

A That's right.

Q All right, and then, isn't that the front side?

A Yes, I guess so.

Q So you first wrote your name and ---

A Yes, sir.

Q And put the date. And then she let you read everything on the first page?

A Yes.

Q And then she told you not to turn it over until she told you?

A That's right.

Q And then she came in and told you ok, begin?

A Yes.

Q And then you turned to the inside and began working on the test?

A Yes.

Q All right. Were you then left alone?

A I was.

Q Until you completed the test?

A I was.

Q And then she se came back in and took the test from you?

A That's true.

Q Did she grade it in your presence?

A No, she gave it to Mr. Partin.

Q And Mr. Partin didn't grade it in your presence, did he?

A Well I don't know whether he grade it or not, all I know he brought it in and then he would ask me different things about Reverend Lewis and different things about a lady I said was working out there that didn't have educatio , and ---

Q WAit a minute, before you get into that. You turned in the test after you completed it, to the lady?

A Yes.

Q And she gave it to Mr. Partin?

A Yes.

Q And then did you have a meeting with Mr. Partin?

A That's true.

Q Tell me what happened in this meeting.

A Mr. Partin took the test and asked me about the things that was happening, asked me did I go to Washington. He asked me did I tell them about Ruby Nichols and I told him I did, and he got, went and got a test showing where Ruby Nichols had a ninth grade education and her standards was higher, and she had a better mark than I did.

Q On the test?

A That's true. But still he told me to come in for the physical that Monday.

Q Well did Mr. Partin tell you anything during this conversation about what you made on the test?

A No, I don't know what that was.

Q Did he say you passed the test?

A Oh yes, you don't get to see the doctor if you don't pass the test.

Q Well he told you you passed the test?

A Oh yes.

Q So you did know something about the test?

A Yes.

Q What else, anything else said during the conversation?

A Nothing, he told me to go back and tell Reverend Lewis in my next meeting with him, that I made a mistake, because Mrs. Ruby Nichols had a ninth grade education.

Q Because what?

A He told me to go back and tell Reverend Lewis that Ruby Nichols had a ninth grade education, and tell him that you made a mistake.

Q About this girl that he said had a ninth grade education?

A That'sright.

Q Anything else?

A Nothing that I can recall at the present time.

Q Now you also took a physical examination, didn't you?

A That's true.

Q When was that?

A That was the first Monday in December.

Q That was shortly after you took the Wonderlic test?

A Yes.

Q How did that come about?

A He told me when I took this test, he told me, which was on a Friday I believe, if I make no mistake, anyway he told me to come in Monday at two o'clock to see the doctor.

Q Mr. Partin told you that?

A Yes.

Q Did you come in?

A Yes.

Q And you were given a physical examination?

A I was.

Q Now prior to taking the physical examination were you asked to fill out a form?

A Yes.

Mr. Deakins: Iwould like to have the Reporter mark this document as defendants' exhibit 18 for identification.

(Document referred to is received as defendants exhibit 19 for identification.

Mr. Deakins: Iwould like to have the Reporter mark this document as defendants' exhibit 20 for identification.

(Document referred to is received as defendants' exhibit 20 for identification)

Q (By Mr. D eakins) Mrs Rhodes, I show you a document which has been marked for identification as defendants' exhibit number 19, and ask you to look at that.

Mr. Finey: Do you want to stipulate that the doctor examined her and found her physically unqualified for work at Campbell Soup Company?

Mr. Deakins: Yes, I will stipulate that.

Mr. Finney: Let me talk to my counsel. (consultation)

Mr. Deakins: We propose to stipulate that Mrs. Beulah Rhodes filled out the form which is identified as defendants' exhibit number 18. She was given a physical examination by Dr. R. E. McDowell. That following the physical examination the doctor completed what has been identified as defendants' exhibit number 19, which Mrs. Rhodes signed, and that thereafter Dr. McDowell sent a letter to Mrs. Rhodes, which is identified as defendants' exhibit number 20, dated Janury 16th. And we will further stipulate that the four reasons stated, that for the four reasons stated in the letter, which is identified as defendants' exhibit number 20, the doctor found that Mrs. Beulah Rhodes was not physically qualified to perform the work required at Campbell Soup Company.

Mr. Rachlin: I would like to change that last point in the stipulation, to say that instead of for the reasons stated, I would like it to read that in exhibit 20 for identification the doctor stated that for the reasons set forth in the letter of January 16, he could not, he recommended that you are not personally qualified to perform the work required at Campbel Soup Company.

Mr. Deakins: Well now we are proposing to stipulate the fact that the doctor concluded, for these four reasons.

Mr. Rachlin: Yes, but I don't want that stipulation to say that that is a necessarily correct conclusion. We are not stipulating that this is a correct conclusion.

Mr. Deakins: We are stipulating that this is the doctor's conclusion.

Mr. Rachlin: Yes, but not that that is a correct conwlusion. I don't care about the phrasing, as long as there is no misunderstanding of that fact.

Mr. Deakins: Well, I think the best thing to do would be for us to stipulate what I havw proposed with the understanding that you are free to attack the validity of the doctor's reasons. But we are stipulating that these are this doctor's reasons.

Mr. Rachlin: That this is what he said, I don't think you could go further than that the doctor has said these are the reasons. I don't know what was in his mind, I can't stipulate as to his state of mind.

Mr. Deakins: We can stipulate that these are the reasons that the doctor ---

Mr. Rachlin: I can say these are the reasons the doctor gave for disqualifying her.

Mr. Deakins: Based on his examination?

Mr. Rachlin: All right, based upon his examination.

Mr. Deakins: All right, I will stipulate that.

Mr. Rachlin: That leaves us, you understand, for example suppose it were, I want to be very caidid, I don't know this doctor, he may be a perfectly honest man, I don't want to impugn him one bit, but on the other hand examination may show that he is not honest.

Mr. Deakins: Well you just want to leave it open for you to come in and through some other source, say that this doctor's reasons are wrong.

Mr. Rachlin: Not merely that they were wrong, but also that he might have known it was wrong. What I am saying, he gave you these reasons, there is no question about that.

Mr. Deakins: All right, then let's put the stipulation in this form. We stipulate that the four reasons stated in the letter identified as defendants' exhibit number 20, are the four reasons that this doctor gave for disqualifying Mrs. Rhodes, based upo his examination.

Mr. Rachlin: That is all right.

Mr. Deakins: And that based upon the four reasons that he gave, he could not recommend that she was physically qualified to perform the work required at Campbell Soup Company.

Mr. Rachlin: We agree to that.

Mr. Deakins: I think the record will beclear on it.

Q (By Mr. Deakins) Mrs. Rhodes, at the time you took the physical examination from Dr. McDowell, were you weighed?

A Yes.

Q Do you recall weighing 233 pounds at that time?

A Yes, I didn't see the figure on the scales.

Q Is it correct that at the time you took this physical examination by Dr. McDowell, you had an artificial right eye?

A That's true.

Q Have you ever, since you examination by Dr. McDowell, and since you received this letter from Dr. McDowell, have you ever had any further physical examination by any doctor?

A When I got the letter from him, I already had had other physical examination.

Q By another doctor?

A Yes.

Q Well at the time you had the physical by the other doctor, did you know the details of why Dr. McDowell had thought you were disqualified? Had he told you?

A Yes, he told me.

Q Then after that, after you had the physical, before you got this letter, then you had another physical examination by another physician?

A You mean, did he tell me ---

Q When he gave you the physical examination he told you you were not physically qualified for a job?

A Yes, he told me I didn't pass anything.

Q Then after that, but before you got this letter from him, dated January 16th, you had another physical examination?

A Yes.

Q This wasn't for a job anywhere?

A No, this was to find out for myself, was I near dead as he pretended I was.

Q And what was the name of the doctor that gave you this physical?

A Dr. Winters and Dr. Eaddy.

Q Both doctors gave it to you?

A Yes.

Q Then you received this letter from Dr. McDowell, dated January 16th, 1967?

A I received a letter, I don't remember the actual date, but I did receive a letter from him.

Q Shortly after January 16th?

A Somewhere in January.

Q After you received this letter did you ever have any other physical examination?

A I don't remember.

Q You don't remember having any other physical?

A In other words, it was after or before I received this letter, I went to Dr. Andrews, Sr., and he give ma a clean bill of health, written in his own handwriting, there was nothing wrong with me. I went to three different doctors after Dr. McDowell examined me.

Q Oh, you went to three doctors?

A Yes.

Q Did you go to them all three separately?

A Yes, I did.

Q Now give me those three names again please.

A I went to Dr. Winters, Dr. Winters sent me to Dr. Eaddy.

Q Did Dr. Winter examine you?

A Yes, he did.

Q Then he sent you to who?

A Dr. Eaddy.

Q Did he give you any reason why he was sending you to Dr. Eaddy?

A Yes.

Q Why?

A Because he wasn't a mouth specialist.

Q Then you went to Dr. Eaddy?

A Yes.

Q All right, and after you saw Dr. Eaddy did you see anyone else?

A Dr. Eaddy sent me back to Dr. Winters, Dr. Winters completed his examination and give me in writing, he signed it, and Dr. Eaddy give me in writing, he signed it.

Q And who was the third one?

A Dr. Andrews, Sr.

Q And did you get written statements from all three of these doctors?

A All three doctors.

Q Do you have those statements with you?

A No, I don't.

Q Do you have copies of them in your possession?

A No, I don't.

Q Where are they?

A I send them to the OEO.

Q To who?

A The OEO.

Q You mean the Equal Employment Opportunity Commission?

A Yes.

Q And you don't have copies?

A No, I don't.

Q Well did any of these three doctors that you visited say anything about you not weighing 233 pounds? Any of them say Dr. McDowell was wrong in saying you weighed 233 pounds?

A I didn't tell them what Dr. McDowell say, I went to Dr. Winaters and he wanted to know what I want. I told him I want a thorough examination, all over. He say why you want a thorough examination all over. I say I want a thorough checkup. He say why. I say because I have been told by a doctor that I have something growing in my mouth, my ear drums messed up and something wrong with my legs and I can't stand on them and that I cannot bend. And I said I have worked in public places and I have a big family and I have been turned down for work for disqualification, and I want a thorough examination, I want it in writing, so I can protect myself, so if I am physical, near dead, I can protect myself and my family and others, and so he examined me, he went over me and sent me to Dr. Eaddy to have my mouth examined, he say he wasnot no mouth specialist.

Q This first Dr. Winter you visited, what did he tell you after finishing his examination?

A After he finish his examination he told me to get up and walk. I got up and walked, he put me on the table and he hit me on my knee, and he say I don't know what in the hell the Campbell Soup Company's qualifications is but there ain't a damn thing wrong with you.

Q Did Dr. Winter say anything about over weight?

A He did not tell me anything about over weight.

Q He did not examine your mouth, is that right?

A No, he told me he wasn't a mouth specialist.

Q Well did he say anything one way or the other about you being overweight?

A No, he just mashed my legs and and hit me on them and he said do your legs hurt? Itold him no, and he say get up on there, that floor, he say bend over, he told you you couldn't bend? I say yes, and he say straighten up, touch your toes, and I did, and he say you can't bend? I say that what he say to me, I cannot bend, and he say well take off your stockings, and I did, and he say get back on the table, he say your legs ever pain you, I say no, and he say I don't see nothing wrong with your legs, and he got something or other and stuck itin his ears and put it back on my legs, he say I can't see nothing wrong with your legs, he say I don't know what in the hell qualification Campbell Soup Company got but it ain't a damn thing wrong with you.

Q All right, is there anything else, any other thing that he did to you to examine you other than what you have told me?

A Yes, he started ~~sxsx~~ off, he give me. at the mouth, under my tongue, and then he look down my throat and he put this little thing in his ears and he went over me, and he tell me to take a deep breath and told me to say ah, I don't know what all, and me mash me in the stomach.

Q Did he look in your ears?

A He looked in my ~~meught~~ mouth and ears and told me to go to Dr. Eaddy because I am not a mouth and ear specialist, and I got to Dr. Eaddy and he looked in my mouth and he said it is the healthiest thirty-seven year old mouth I looked in in a long time. I was so glad I forgot about the ears, so I ain't never had my ears looked in yet.

Q Then you went to Dr. Eaddy?

A Later I went to Dr. Andrews. I just told you what took place there.

Q He examined your ears and mouth?

A He examined my mouth, my mouth was healthy. I forgot what he tell me about my ears.

Q Then you went to this third doctor?

A I did.

Q What did he do?

A He took a blood test, weight, and kidneys and mash my legs and stomach and then he wrote me up, ok.

Q Then you got a letter from all three of these doctors?

A They give me a statement, Dr. Andrews did not give me a statement because he could not give me a statement, he was taking a blood test, and Dr. Winters and Dr. Eaddy give me a statement of the findings.

Q So you got two statements?

A Yes.

Q And you don't have a copy of them?

A No.

Q You sent those to the EEOC?

A Yes.

Q Did you ever provide the company with copies of these letters from these doctors?

A No.

Q Did you ever bring it to the attention of anyone at the company that you had had these other physical examinations?

A No, I did not.

Q You ever go by and talk to Dr. McDowell about the letter he had sent you?

A No, I did not.

Q Did you ever show the letter from Dr. McDowell to any of these other doctors that examined you?

A No, I did not.

Mr. Finney: Idon't want the record to be in error, you wanted to see a copy of this - I guess I had better clear it with the witness first. Look at that, see if that is a copy of the statement you got from Dr. Andrews, or I got.

The Witness: Yes.

Mr. Finney: Do you have any objection to me showing that to counsel?

The Witness: No, sir.

Q (By Mr. Deakins) Mrs. Rhodes, have you ever filed any type of charge or complaint against Campbell Soup Company, saying that they have discriminated against you?

A Yes, I have.

Q How many charges have you filed?

A One.

Q Well, other than filing a charge, have you filed anything else with the EEOC?

A When I, um, I sent these doctor reports in that was added on, I already filed a file against the discrimination before I ever took the test, any kind of test, I already filed my suit against, for discrimination.

Q I would like to show you a document which has been marked for identification as defendants' exnibit number 10, and ask you to look at the document. Have you ever seen that document before?

A I don't remember.

Mr. Deakins: I think we can stipulate that her name does not appear on the document.

Mr. Finney: Yes, sir.

Mr. Deakins: I ask the Reporter to mark for identification defendants' exhibit number 21, and also a document for identification as defendants' exhibit number 22)

(Documents referred to are received as defendants' Ex's. 21 and 22 for identification).

Q (By Mr. Deakins) Iwould like to show you the document marked as defendants' exhibit number 21 for identification, and ask you if you can identify that document.

A Yes, I can.

Q What is that? Is that a charge that you filed with the EEOC?

A It is.

Q How did you go about filing this? Did you file it by mail or ---

A I did.

Q You mailed it to them?

A I did.

Q Did you mail all pages to them, all three pages?

A No, my first applica - first complaint, charge, I wrote it in handwriting and had it typed up, I went back and read what was on it, what they had they had typed up, then I signed it and then I mailed it. I had nothing in handwriting, except my name.

Q All right, is the typewritten part that you mailed to them the third page of defendants' exhibit number 21?

A The top, yes.

Q The third page?

A Yes.

Q Al right, that is the letter you had typed up?

A That's right.

Q And that, your signature appears at the bottom of the third page?

A That's true.

Q All right, now you will notice that on the second page of this exhibit, the signature, Mrs. Beulah Rhodes, appears, is that your signature?

A That's true.

Q Did you sign that and mail it too, at the same time you mailed page three?

A I don't remember.

Q But that is your signature on page 2?

A Yes.

Q All right, now did you sign that on approximately September 22, 1966?

A I guess so.

Q Sometime in September, 1966?

A That's right.

Q Now I would like to show you another document which has been marked as defendants' exhibit number 22 for identification, and ask you if you can identify that document?

A I can.

Q All right is that a copy of another charge that you filed with the Equal Employment Opportunity Commission?

A That's true.

Q All right, does your signature appear at the bottom of the first page?

A Yes.

Q Is that your signature?

A Yes.

Q Is that your signature at the bottom of the second page?

A Yes.

Q Was this charge which is identified as defendants' exhibit number 22, was it filed on or about December 6, 1966?

A I believe so, as near as I can remember. It was after I had the doctor examination.

Q Besides defendants' exhibit number 21 and defendants' exhibit number 22, have you ever filed any other charge with the Equal Employment Opportunity Commission against Campbell Soup Company?

A No, I have not.

Q Mrs. Rhodes, did you receive a copy of the decision by the Equal Employment Opportunity Commission?

A I did.

Q All right, can you tell me whether or not you received that decision before or after you filed defendants' exhibit No. 22?

A Before I received this, I have not, it was before I filed this - let me look. I received --

Q You received the decision before you filed defendants' exhibit number 22?

A Yes.

Q I notice that the decision of the EEOC is dated December 5th and your charge is dated December 6th, so that would be accurate. Now Mrs. Rhodes, you had an opportunity to look over these two charges that you filed with the Equal Employment Opportunity Commission. You do claim in those charges that you have been discriminated against by Campbell Soup Company?

A Yes.

Q Would you explain to me what reasons you offer to support your claim on, of discrimination?

Mr. Finney: We would object on the ground that the charges have been introduced and are now tentatively a part of the record, and the charges would speak for themselves as to what the allegations of discrimination xxxx were. Now go ahead.

Q (By Mr. Deakins) I want the witness to understand I am asking you for your present claim, as to why you feel you have been discriminated against.

A In my own words and thoughts, in the beginning, before it ever was built, it was advertised in the paper, radio and television, no grade level, whatever.

Q Did those advertisements say no grade level?

A It said Campbell Soup plant would be hired with equal opportunity, no grade level.

Q It was advertised on the radio and on the TV, it was equal employment opportunity?

A That's right.

Q All right, go ahead.

A And then after they started hiring, if you go to the employment office there was more negroes there than whites. If you go to the plant, there was more negroes there than whites. And when you come up to the hiring proposition, there wasn't as many negroes there as was thites, not near a third as many. And I know that we are qualified because it is nothing but domestic work and that was all Campbell Soup was, farming and domestic work, and Campbell Soup is nothing but a big domestic job.

Q Any other reason?

A Grade, it was a standard, after they started hiring for a little over a month they hired any grade level whatsoever, and then they put in the grade level and then they put in this Wonderlic test.

Q How do you feel you have been discriminated against because of the eighth grade requirement?

A I felt I was discriminated against the eighth grade level, because the schooling I had was not quite as high as the white school at that level. The eighth grade education of a white child do not, ~~a~~ it equals above a negro child.

Q You completed the eighth grade?

A That's right.

Q And you met that requirement?

A I met that requrement, if I had been white, but I was a negro and therefore I only had a fifth grade education according to the standard.

Q Who told you what the standard was?

A They said you had to have a eighth grade, after they put this grade level on they told us you had to have eighth grade education.

Q But you had an eighth grade education?

A But my eighth grade education compared to a white was only a fifth grade education.

Q Do you understand your eighth grade education did not meet the requirements of Campbell Soup Company?

A I know that from the beginning, all my life, I know I didn't have the education. I work for you people, I see your books, I knows this, none has to tell me.

Q Who told you that Campbell Soup Company had an eighth grade requrement?

A Mr. Partin told me.

Q Who, how did he tell you that, what did he say?

A He told me before I ever seen any test that the eighth grade education was standard.

Q All right, he said in effect to get a job at Campbell Soup Company you had to have an eighth grade education?

A Yes.

Q And that is all he said about it?

A Yes.

Q And you had an eighth grade education?

A But that education didn't add up to a white education.

Q Did Mr. Partin say anything about what school you had to go to?

A No, he did not.

Q He just said you had to have an eighth grade education?

A Yes.

Q And he didn't mention what school you had to go to?

A That's true.

Q Now do you claim you have been discriminated against because of the Wonderlic test?

A Yes.

Q You passed the Wonderlic test, didn't you?

A So he say, I don't know.

Q In what way do you think you have been discriminated against by taking the Wonderlic test?

A Well it had no connection with the work there, nothing said about poultry.

Q But you don't claim taking the Wonderlic test disqualified you from employment?

A I feel it was put there for discrimination.

Q You feel you were personally discriminated against because of the test?

A Yes, I do.

Q In what way?

A By being put there in the first place.

Q But you don't claim that the test kept you from qualifying for employment out there, do you?

A The test was a discrimination, knowing you had to have the test to pass the test and if both of them was combined, and the test don't make no connection with the work.

Q But you did pass the test?

A So he say, I don't know.

Q Have you ever received any information to the contrary, that you flunked the test?

A No, I have not.

Q The only information you have is that you passed the Wonderlic test?

A Yes.

Q And you understand you had to pass the Wonderlic test to get a job at Campbell Soup Company?

A That's right.

Q So since you didn't flunk the Wonderlic test, it didn't disqualify you, did it?

A No, It did not.

Mr. Deakins: No further questions.

EXAMINATION BY MR. RACHLIN

Q Mrs. Rhodes, in your case, the fact that actually disqualified you was what, the medical examination?

A Yes.

Q Now in the area around Sumter do you know, do you have any knowledge of whether there are many negro children who had an eighth grade education?

Mr. Deakins: I object unless some foundation is laid.

Mr. Rachlin: I am asking her of her own knowledge, does she know.

A Well the average negro's education is Sumter is about sixth grade, as far as I know.

Q So that, by the average negro education being sixth grade, do you happen to know what the average white education is?

A Ninth.

Mr. Deakins: I want to object to this whole line of questions.

Q (By Mr. Rachlin) Now Mr. Deakins asked you some ~~xxxxx~~ questions about the Wonderlic test, and how you thought it was discriminatory. Let me see if I understand you. Now you were advised you had passed the Wonderlic test?

A Yes.

Q But at the beginning there was no Wonderlic test?

A No.

Q And in the beginning there was no eighth grade qualification?

A No.

Q Now of your own knowledge do you know who was hurt when they put into effect the eighth grade level, was it white or colored people who were hurt?

Mr. Deakins: I object.

Q (By Mr. Rachlin) Do you understand the question? Do you know of your knowledge whether more white or more negro people were hurt when they put the eight grade level into effect and the Wonderlic test?

Mr. Deakins: I object.

A There was more negro.

Mr. Rachlin: I have no further questions.

EXAMINATION BY MR. DEAKINS

Q Where did you [illegible] obtain your information as to the average grade level education of negro employess in theSumter area?

A I go to meetings differenct places and I hear these things.

Q You heard it discussed?

A Yes.

Q By whom?

A Several different people.

Q Who?

A In these various meetings we would be going to.

Q What meetings?

A We have meetings, in the newpaper, public meetings.

Q Are these Core meetings?

A No, not all of them, goodness no.

Q I want to know who made the statement to you that the average grade level of colored children is --

A I got that information from a PTA meeting.

Q Did somebody say that during the PTA meeting?

A Yes.

Q Who?

A Our teacher.

Q What is her name?

A Well that I don't know, I attended a PTA meeting.

Q You know where she got her information?

A I don't.

Q Have you ever seen any official statistics of any kind showing the grade level of colored and white children in the Sumter area?

A No, I don't, I have not.

Q Any other source from which you gained knowledge about the average grade level of colored children and white children?

A No.

Q Where did you obtain your information as to the average grade level of white children?

A At a PTA meeting.

Q Did the same teacher say it?

A Yes, in the same place.

Q Who told you?

A A teacher, I don't know who she was.

Q And you don'tknow where she got her information?

A No.

Q You hever seen any official statistics of the average grade level of white children in the Sumter area?

A No, I have not.

Q But you went beyond the sixth grade?

A Yes.

Q You went to the ninth grade?

A Yes.

Q And you claim the ninth grade is the average grade level for white students in Sumter?

A Yes.

EXAMINATION BY MR. RACHLIN

Q Now in the school you attended were there any white children?

A No.

Q What time of the year did the school year begin?

A I guess it was around the middle of October or the first of November, somewhere in there.

Q Do you know whether the white children began school at a different time?

A Yes.

Q Was it before or after?

A After.

Q Can you give us an idea of about how much before?

A They start in September, because I know, time we start harvesting.

Q In what month do you remember that your school year ended?

A In May.

Q And do you know when the white children school year ended?

A Their school term would go on when ours closed.

Q On beyond yours?

A Yes.

Q Did you have a bus to take you to school?

A Oh no.

Q Do you know whether the white children did?

A Yes.

Q How about school books, were you given school books?

A No.

Q You had to buy them?

A Yes.

Mr. Deakins: Now I want to object again to this entire line of questions.

Q (By Mr. Rachlin) Now do yo, in your school were there only negro teachers or were there also white teachers?

A Only negro.

Q So that from May to October you did not attend school, is that correct?

A No.

Mr. Rachlin: No further questions.

EXAMINATION BY MR. DEAKINS

Q My questions now are subject to my objections. Did your schools begin in October or did you just start in October? Did you start a little later ever year?

A No, to my personal knowledge our school started either the last of September or the first of October.

Q You started to school the first day it started?

A Sure, we enrolled, but we couldn't stay there because we had to come out and pick cotton. We enrolled the first day.

Q But there were other students that were going to school while you were out picking cotton?

A Oh yes, some.

Q All right, when did you all enroll before you went back home to pick cotton?

A It was either in, the middle of September or the first of October, I don't remember, it been so long, but I do know that--

Q Well didn't you all enroll and the school officially start the same time the white schools started?

A Oh no, definitely no.

Mr. Deakins: Nothing further.

MR. JAMES PARHAM

was duly sworn and testified as follows:

EXAMINATION BY MR. DEAKINS

Q State your name please?

A James Franklin Parham.

Mr. Deakins: I would like to have the Reporter mark this document as defendants' exhibit number 23 for identification.

(Document referred to is received as defendants' exhibit 23 for identification)

Q (By Mr. Deakins) Mr. Parham, I would like to show you a document which has been marked for identification as defendants' exhibit 23, and ask you to look at it. Can you identify that document?

A Yes.

QIs that an application for employment you filed with the Campbell Soup Company?

A Yes, it is.

Q Now I notice Mr. Parham, that this application is dated May 30th, 1966, is that correct?

A Yes.

Q Is that your writing?

A Yes, sir, it is.

Q Is that the day you filed the application?

A It must have been, there is the date there.

Q You filed, filled in the date the day you filled out the whole application and turned it in?

A That's true.

Q And your recollection is that you put the correct date in?

A Yes, sir.

Q All right, and it was approximately May 30th, 1966?

A Approximately that time.

Q Is this the only application for employment you have ever filed with Campbell Soup Company?

A That is the only one.

Q Now at the time, how did it come about that you went out to Campbell Soup and filed an application?

A Well it was during the time, from the beginning, um, I learned that they was buying a ~~b~~ tract of land out there, and some of the representatives of the company came down and met with some of the people in Sumter, and in a lot of places they had down that the Campbell was coming to Sumter and was employing people, and of course skilled men, as well as men to be trained at the Technical Center up there, to occupy the, um, the positions, and I had been waiting for that chance, and when I learned that they was going to open up in June of 1966, about the middle of June, and through all the papers and the radio it was announced, and then I decided to go out and apply.

Q You were not referred by the South Carolina Employment Security Commission?

A No, sir.

Q You just went out on your own?

A Yes.

Q At the time you went out on your own, did any Campbell Soup people or reptesentatives tell you they could not take your application, because you had not come to the State Employment office?

A No.

Q Who did you give your application to?

A To the, er, young lady that was in the office.

Q Were you ever interviewed by anyone, concerning a job?

A Conecerning a job princiapally for myself , no.

Q You weren't interviewed by Mr.Partin?

A Yes, but not for myself. On other occasions I met with him, and we discussed, er, not for myself, but for others, just in general.

Q Was this after you had filed your application?

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COURT REPORTER
THIRD JUDICIAL CIRCUIT
SUMTER, S. C.

A Yes, sir, after I filed my application.

Q Now after you filed your application did you ever go back out to Campbell Soup Company at any time?

A Once, I phoned and asked them about the applicatio and they told me that I would be, that, he say I would hear from it, soon as they get around to it.

Q When was that?

A Well it was about a month later, I presume.

Q Who did you talk with at that time?

A There was a lady in the office.

Q You know who that was?

A No, they didn't ever give any names.

Q Now this is your signature that appears on the back side of this application, isn't it?

A Yes, sir.

Q You filled that in?

A Yes, sir.

Q Now is it correct that, with the exception of the writing written around the top of the front of the application, with the exception of that, those writings, are all the answers to the questions in pencil your writing?

A Well, as far as I can recollect, yes, sir, that my writing.

Q I notice that in the category position desired on the application, you put plumbing and steam fitting?

A Yes.

Q Is that the job you were applying for?

A Yes.

Q Did you tell them, or did you tell anyone at Campbell Soup Company, you were applying for any other type job?

A No, I don't remember telling them. I was applying for a skilled job, for plumbing, because that is my trade.

Q Your trade is plumbing?

A Yes, I am a master plumber by trade in the State of South Carolina, and I applied for plumbing.

Q All right, but you didn't tell anybody at Campbell Soup Company anything different about the position you desired, other than stated on the application?

A No, sir.

Q And the pay expected, you put three dollars or more per hour?

A Yes, sir.

Q Did you ever tell anybody at Campbell Soup Company you were interested in any job for less money than that?

A I never got a chance, I would have --

Q Well I am not asking you what you would have done. I am asking you did you.

A I did not.

Q I notice on your application the question is asked, have you ever been arrested, and that question is not answered, is that correct?

A Yes, sir, I --

Mr. Rachlin: Hold it, I am going to object to any questions about that on the ground that the question was improper in the first place, and it is ~~xm~~ particularly improper in a legal proceeding. If you want to ask him if he has been convicted of a crime you may do so.

Q (By Mr. Deakins) Is it correct that the question, have you ever been arrested, is not answered?

A Yes.

Q Is it a fact that you have been arrested?

A Yes, I have been arrested.

Q On how many occasions?

A Once, I was in a wreck.

Q Apprxbximately when was that?

A Many years ago, I couldn't tell you exactly when.

Q Well can you be approximate about it?

A Maybe about ten or twelve years ago, no longer than that, around eighteen or nineteen years ago.

Q What were you arrested for?

A Well it was an accident, and they found out afterwards I was innocent, but I was arrested.

Q What did they ~~xxx~~ claim you had done?

A I was in a accident.

Q Automobile accident?

A Yes.

Q Anything else?

A That's all.

Q Now Mr. Parham, back in 1963 weren't you convicted of breach of trust with fraudulent intent, and fined $150.00?

Mr. Rachlin: I object to the question.

Q (By Mr. Deakins) Were you fined in 1963 a total of $150.00?

A For what?

Q For breach of trust with fraudulent intent?

A I don't know, you will have to break that down where I can understand it.

Q Were you convicted of any crime in 1963?

A I can't recall, but the language you speaking there, I can't understand it.

Q I am not asking you about the language, I am asking if you were convicted of any crime around 1963.

A No, not as I know of.

Q You were not fined any money back in 1963?

A No, not as I know of.

Q All right. Now on your application you have listed the places where you previously worked, is that correct?

A Yes, sir.

Q You have listed three places?

A Yes, sir.

Q Did you have, do you have any reason to believe that if any one of these three companies had been checked with, that they would have given you a bad reference?

A No, I don't have any reason to believe that they would.

Q Do you have any information to the effect that Campbell Soup Company has even checked with anyone of these three companies you have listed as previous employment?

A I don't have any information.

Q You have listed on your application three people as character references, is that correct, on your application?

A That's right.

Q Do you have any knowledge or any information that would lead you to believe that any one of these three people would have given you a bad recommendation?

A You never know individuals, so I wouldn't know whether they would or not, I will be frank. I just thought that they would give one, but knowing that they would, I don't.

Q Do you have any knowledge that any one of these three character witnesses that you have listed were in fact checked by Campbell Soup Company?

A Let me see that. I, now those the ones, I, I don't think, they may have check with them, I don't know, but ---

Q Well I am asking if you know.

A Well I say I don't know, they may have.

Q But as far as you know they have not?

A As far as I know they have not.

Q Do you have any information that Campbell Soup Company has checked with anybody as a reference to whether or not you would be employed out there?

A No, I don't, because most of the folks the reference on there, I usually discuss with them and commune with them on occasion and none ever haven't discussed it, that they have been checked.

Q Have you ever gotten any information that Campbell Soup Company has checked with anybody else about you?

A No, I have not.

Q Now you have listed three companies that you worked for on your application. Have you worked for other companies besides those three companies?

A Well I bill the larger companies that I work for, and people keeping records and giving references, that is why I mentioned those companies. Now me bein a private contractor, well there is thousands of people I work for, you know, different small category, different construction company, not construction company exactly but I contract a job.

Q You were working for the building contractor.

A Yes, sir, those are building contractors mentioned there but mostly I work myself, self employed, and I contract my own jobs.

Q Oh, I see. But as far as the companies that you worked for when you were not out working on your own, these are the only three you have ever worked for that you listed on your application?

A Those three was, let me look at it again. Well I worked for companies around town here, small companies, but they are the major companies. Because whenever you work for those companies, it would be, it is a good reference, you have to be on the top to work for those companyes, anyone know you work for them, you are one of the best.

Q All right, now one of those companies you list on your application is Parham Plumbing Company. Now that is you?

A Yes, that is me.

Q You are not a corporation, that is not a corporation, is it?

A No.

Q That is the name you used when you work on your own?

A Well I have a license, Parham Plumbing Company is the name of it.

Q Have you ever worked for any company that was engaged in procedssing poultry?

A No.

Q Now all of your plumbing experience has been in buildings, building buildings, building construction?

A No, building is a major part of it but general repair is the backbone.

Q You claim that your craft is plumbing?

A Yes.

Q Do you have any other maintenance skills besides plumbing?

A Well in the army, I expect it would be a clerk, a dispatcher, and I typed.

Q Did office work?

A Office work, yes.

Q I am talking about the building trades now.

A Oh, building, well I minored when I was at Tuskegee in brick masonry.

Q Brick masonry?

A Yes. In plumbing work, I keep up with it, because usually we build septic tanks and things.

Q Any other building trade that you have engaged in besides plumbing and brick masonry?

A Well I raised, my father was a crapenter and I done a lot of that in my coming up days, but I have no certificate or degrees on that, jur a pickup, a gift.

Q You don't do electrical work?

A No, just repair, my work home, personal work.

Q Putting in lightbulbs?

A Well, more than that.

Q Now have you ever had a regular steady maintenance job of any sort with an industrial concern?

A No, because the couple I mentioned there, was mainly construction work, building, putting in Shaw Field and the Navy base in Charleston.

Q You have never worked for any plant of factory as one of their regular employees, to take care of maintenance from day to day?

A No, while in school to Tuskegee, the four year training there, is really a maintaining work, you learn by doing, and every day, we go around and keep the repair up for the school, that is where we get most of our training from, and I get a lot of my training that way, for maintenance work.

Q While you were in school?

A Yes.

Q But since you have been out of school you have not had a job with any industrial plant or factory?

A Well most places around town is just call in for general repair work.

Q Those were always times when you worked for a building company?

A Building contractors, and houses and plants around here, I worked schools and other places.

Q But you have not been on the payroll of any industrial company?

A No, not by the month.

Q Do you have any relatives that work for Campbell Soup Company?

A Not that I know of.

Q You have, you know any of the people that do work out there?

A Well I know a few people by name that work out there?

Q All right, how many?

A Oh, if I had to call by name I, probably it would be hard to do so, but I had some folks, I have seen some folks that are working out there now.

Q You have taken people out there trying to get them jobs?

A Yes.

Q And they have gotten jobs?

A Yes, sir.

Q And were those negro people?

A Yes.

Q How many?

A Numerous times, I have been out there, but I couldn't give you the exact number.

Q Can you give me an approximate number?

A Oh, about, I can say in the neighrbood of a dozen or so, that I know that are hired out there.

Q There are at least a dozen then, all negroes, that you have taken out from Sumter to , for them to get a job, and they have gotten a job?

A Yes, they have got a job, working. Some was hired immediately and some hired later that registered sometime back.

Q All right, now, there have been occasions when you have gone out there and held meetings with the officials of Campbell Soup Company, haven't you?

A Yes, sir.

Q How many times have you gone out there to have meetings with representatives of Campbell Soup about their hiring procedure?

A About five or six times.

Q Five or six different times?

A Yes.

Q Did Reverend Lewis go with you on a number of those occasions?

A Yes, we worked together.

Q You weren't going out there on those occasionsto check on your application, were you?

A No.

Q You were going out as the official representative of anyone at the time?

A Well yes, I guess you could say so, at times, folks would come around and discuss the necessity of wanting a job, needed jobs, and seemed to have problems getting jobs, and we tried to work in with Mr. Partin, where we could help or assist him in getting good employment, employees, that would be an asset to the factory and that needed employment. Likewise, we discussed that we would try to work along with him and that, in any way.

Q And you were successful in certain cases?

A Well yes, sir, I was, some folks I have taken out there myself, who signed up and they have been hired.

Q All right, now when you were going out there on these official visits, as I call them, in what capacity were you going out there? Were you the representative of some organization here in Sumter?

A Well I, I am a local elder on, of the church, and being a leader, as, they would come to us to get advice, and we look after the peopl, that is our job, advise them not only spiritually but physically, economically or in any way we can.

Q Is this the same church that Reverend Lewis is a minister of?

A No, this is a Seventh Day Adventist Church, Saint Mark.

Q Do you hold any official position with the National Association for the Advancement of Colored People?

A No, I don't.

Mr. Rachlin: We object to that.

Q (By Mr. :Deakins) Do you holw any position with Core?

Mr. Racklin: Object to that question, irrelevant.

Q (By Mr. Deakins) You hold any official position with Core?

A Yes, sir.

Q What position is that?

Mr. Rachlin: We object to that question.

A I am a member.

Q Do you hold any office in Core?

A Well, yes, I do.

Q What office do you hold?

A I am Treasurer.

Q Does Reverend Lewis also hold an official position with Core?

Mr. Rachlin: Object to that question.

A I think, he is here, he can tell you.

Q (By Mr. Deakins) Well I don't have him on the stand now. I am asking you, is Reverend Lewis also an official of Core?

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A I would rather him testify for hisself.

Q I am asking you.

A They change so fast I wouldn't know, I wouldn't be able to answer that question.

Q Now Mr. Parham, you are under oath, and I am asking you if you know whether Reverend Leis is an official of Core. Now do you know?

Mr. Rachlin: That question has no bearing on this case. you have not got the right to ask him. We will stipulate that, subject to the competency and relevancy of, and materiality of the question, Reverend Lewis is an officer of the Core Chapter.

Mr. Finney: Either is or was, I don't know whether he is at this moment, but at the time we are talking about, I think he was the president of the Sumter Core Chapter.

Q (By Mr. Deakins) All right, now we have agreed Mr. Parham, that Reverend Lewis was an official of Core, and you said you were an official. Now my question to you is, when you went to Campbell Soup Company, to act on behalf of these other people that ~~xxxx~~ wanted jobs, were you going out there as an official representative of Core?

Mr. Rachlin: Objection.

A We went out there to represent the people that were coming in, that was in need of work and we wanted to get some help, to be of some help to the firm. I tell you, when we heard that this plant was supposed to come to Sumter, and that it would employ the poor people as well as onces with a lot of learning, and we thought it was going to be an asset to this community, to assist as a whole, and all people would come around and ask us to do what we could to help them get on the job, because most the time we have been denied good jobs, and we all looked forward to that day.

Q And were they coming to you as a representative of Core, or as a member of your church, or what?

Mr. Finney: We object to any questions relating to Core, and let it run. Go ahead. Or church.

A Well they come, representing some, not my church alone, other churches too.

Q (By Mr. Deakins) Were they coming to you then because you were the representative of Core?

A No, sir, not because representative of Core, as I made it plain to you before, most of the folks take to preachers and, as leaders, and they come to them for advise on how to go about getting work and employment, to make a better living and to be a better citizen.

Q All right, now you and Reverend Lewis are from different churches?

A Yes.

Q Were you and Reverend Lewis making these trips out to the plant together as the official representatives of Core and speaking to the company on behalf of the Core organization?

A Not, er, I wouldn't say that, because we wasn't the only two that went out there. Sometimes it would be twelve, ten, all different nunbers.

Q Let me ask you this, maybe it would simplify it. During any of these meetings you had with the company representatives out at the plant, did you tell them that you were coming out there as the official representative of Core?

A I can't recall that, but, er, at that time, I was a member of Core, I am not, and um, of course, um, we never discussed Core, that wasn't a part of our discussion.

Q I know you didn't discuss Core, my question is did you tell the Campbell Soup people that was the reason you were coming out there, because you were one of the officials of Core and so was Reverend Lewis, and he was an official representative of Core.

A Well, we were members of Core, and --

Q I understand that, my question is did you tell the Campbell Soup people you were coming to talk to them as members of Core.

A Well um, I don't see why it would have been necessary for us to tell them that.

Mr. Rachlin: We will object to all these questions.

Q (By Mr. Deakins) I am asking if you did, not if there was a need.

A Maybe we, we may have said that we were representatives from

Core, we are members of Core, but it wasn't for Core that we went, were sent out there. We were sent out there to represent the people, looking for an organization which would stand up for them and represent them and lead them into brighter lights, in order to get those jobs, and by us assembled together and meeting together and having the poor at heart, why they would come ar und and seek information as to how to get, hot to better, um, how the could better, um, making a living, get a job, and so forth. I would say that Core did stand for them now. Now you asking if Reverence Lewis was an official member of Core now, I don't know.

Q I am not asking you that.

A This was over a year ago, but yes, we were, all of us members of Core, but it wasn't Core alone that would go out there. It was a party that would go, not just Core period. Members would go that I have never seen in a Core meeting.

Q All right, now when you all made these visits to the plant, did you and Reverend Lewis act as the spokesmen?

A Yes, well somewhat, yes. Not on all occasions. It all depend on, we met several different times, and all the times, on one or two occasions when it was just he and I went, we had to be the spokesmen and on other occasions it was a party. But all the time we wasn't just the sole spokesmen of the crowd. It was what you call a round table conversation, and anyone that wanted to would be able to say what he wanted.

Q If there was anyone there with your party that had anything to offer, they made a statement?

A Yes, sir.

Q But I am talking about who did most of the talking, was it you and Reverend Lewis?

A No, I wouldn't say that. Mr. Partin there could tell you at times we had other ministers there, that said a lot more than we did.

Q All right. Now I believe you said Mr. Parham, that you had heard that when Campbell Soup came down here and built this factory that they were going to employ a lot of poor people?

A Yes.

Q Where did you learn that?

A Well it said at first --

Q I am asking you who said it?

Q Well at the beginning meetings was held everywhere and that was the discussion of the community.

Q Well where did you learn that Campbell Soup was going to employ a lot of ppor people, who told you that?

A Well poor people in the majority, and if they hired, they was going to be more poor people.

Q Who told you that Campbell Soup was going to come down to Sumter and build a plant and employ poor people?

Mr. Rachlin: We object to that, has nothing to do with the issues in this case one way or the other, and I assume it is true.

Q (By Mr. Deakins) Who told you that?

A Well it was discussed at um, um, in the meetings, it would come out that, um, if you were to get people, um, with less skill they was poor people.

Q Did anyone ever tell you that Campbell Soup was going to employ poor people?

A Now, you want me to answer it the way I can answer it? The way I can answer it, where I got my information from, it would be indirectly but the way I got it.

Q I just want to know who told you.

A All right, when this, they would train folks atthe technical center to do that work. We know that the poor people at the ones that had to be trained. A man with a trade don't have ever go hungry, a man with a trade he always get work to do, and he wasn't exactly the needy type. But when they said they going to have the technical center and was going to train, we know common sense, that it going to be the poor people that were going to train for those jobs.

Q I am asking you did anyone ever tell you, that Campbell Soup Company was going to employ the poor people. Tell you.

A Those are the words that tell me that.

Q Who told you that?

Mr. Rachlin: I object to the question, this is becoming now, you are pushing him---

Mr. Deakins: I am trying to get an answer to my question.

Mr. Rachlin: No, jobs, for $1.25 rich people don't formally apply for it.

Q (By Mr. Heakins) I am asking you who told you.

A Well, just reason.

Q Nobody told you, you just though they were going to?

A No, I, they was going to hire folks with less skill for $1.25 an hour --

Q Who told you that?

A Well one of the officials from Campbell Soup plant said they was going to start off at $1.25 an hour, I think in the beginning. They did say that.

Q Someone at Campbell Soup told you that?

A An official said that, that what they were going to pay an hour.

Q Who said that?

A One of the orricials --

Q Do you know his name?

A No, I don't know his name.

Q Told you they were doing to do what?

A Not me exactly, told everybody.

Q What did they tell you?

A That they was going to pay $1.25 an hour, $1.40 an hour.

Q $1.40 an hour?

A Yes, $1.40 an hour, start off with that/

Q All right, is that what he told you, that they were going to start off with $1.40, did you just assume from that that they were going to employ poor people?

A Yes, because, you know, a rich man don'g work for $1.40 an hour.

Q My questions is when he told you that, you assumed they were going to employ poor people?

A That's true.

Q He didn't tell you they were going to employ poor people?

A No.

Q All right. Now can we pin down how many of these meetings you and Reverend Lewis had with the representatives of Campbell Soup Company?

Mr. Rachlin: Objection, irrelevant. We are discussing his case.

A It was several of them.

Mr. Rachlin: That question has been asked at least ones or more times perviously, another ground.

Q (By Mr. Deakins) When was this meeting, before you signed your application or after?

Mr. Rachlin: That question has been asked before also, objection.

A It was after.

Q (By Mr. Deakins) Now some of these meetings were with Mr. Partin, is that correct?

A I think all the meetings I attended he was present.

Q Was anyone else present?

A Yes.

Q Was Mr. Dick Gwozdz present? The man sitting here with glasses?

A Yes, he was present.

Q Anyone else present?

A And Mr. Gardner.

Q Who else?

A That was the only ones I remember.

Q Tell me what your discussion was duringthe first meeting that you had.

A Well the first meeting we had was, we had been having a lot of complaints ---

Q I am not asking you what you had been having, I am asking what was said in this first meeting.

A We were discussing the first meeting about, I was telling, er, er, Mr. Partin and those that, er, um, that lots of complaint was around the city that folks was being hired and their applications been er, er, a whole lot, in other words that, could he go back and look through the file and get some of the applicants that was filed long before Campbell Soup had open up and get them hired, because, and, and, because, they was saying that a lot of people was hired that just recently sign up, and that the ones that been on the books for sometime, seemed like they forgot about them. And so, um, he said that he would probably do it, it would take a time, he had so many thousand applicants there, it was kind of hard to do all of them, but he would get around to doing it. And then he said that um, then we went again, and we had some complaints about others hired that signed up and some on the book a longtime, and he said the company had a right to pick out, to screen, to pick the best out of the number that come, the more qualified ones, most eligible ones. And although they passed the test, still some had better qualifications than others. And then we discussed with them again on another occasion, er, about, er, er, ones that, er, the ones that, they said that they was going to hire and just keep them waiting, waiting, waiting, home, at the mail box, and putting everything aside, looking for them to hire them, but the still put them off, say they would be in touch later on and they don't get a chance to come,to be hired. And we wanted to see if we could get some of them hired. And at one time he promised that he would check the books and go back over the old applicants, and review a lot ofthem. And then we went again, because it seemed thatthey add some more qualifications to the requirements in the beginning. In the beginning they didn't have the dexterity test and the Wonderlic tests, and then, um.

Q Now this is the first meeting now?

A No, this about three or four. Well listen, I couldn't tell you just what meeting everything was discuss in because it was about seven different times that I, er, conversed out there.

Q All right, just go ahead.

A And we told them, we thought that, er, that um, those that um, those admission requirements, was, that would be er, we thought that it would be discriminatory practice against some of our youth. And we would like to see him about that.

Q See who, these two gentlemen?

A Yes, sir.

Q All right, Mr. Gwozdz and Mr. Partin.

A And we went out there and he explained to us that they had four qualifications, not only two, but I think there was four qualifications. The first one was a eighth grade education, and that was something new added on, and then it was, the next was that Wonderlic test, which was very difficult, and --

Q Pardon, what did you say?

A Very difficult test.

Q Did you ever take it?

A No, I never got the chance to, never had the privelege.

Q Go ahead.

A And then he said that another test would be whteher you, fight your wife on Saturday night or raise a disturbance in the community, and so forth ---

Q I beg your pardon?

A Whether you fight your wife on Saturday night or whether you are a good citizen, make disturbance in the community, that was one of the requirements, and your former employment would be one, whether, he say the former employment, whether, we told him that we didn't thought that, on one occasions, we didn't thought that that would be fair, because if you had been working an individual and paid him a dollar and hour and someone hire him for $1.50 a hour, and he going to leave his former employment, and he wasn't going to give him a good recommendation, wasn't going to say anything too good about him. And those were the requirements, for whether you get a job or not, he say would test whether you get a job or not. And they had a right to pick the most qualified ones, although some may have passed, but they just didn't reach the requirements.

Q Did he mention anything about the manual dexterity or finer test?

A Yes, sir, he, I think, er, I thought I mentioned that.

Q Did he mention that?

A Yes, he did.

Q I am sony, did he mention the physical examination?

A Yes, he said physical examination, of course all of us know that one handle food must be in good health, we know that one of the things that would be a requirement.

Q Well you didn't make any objection to the requirement of physical health or physical examination, did you?

A No.

Q You didn't make any objection to the requirements of the manual dexterity test?

A Concerning that test no, it wasn't so very many object to that.

Q I am just asking ybu if you told him.

A No, we never did make any objection to that, but we did make objection to the former employment, and Mr. Gwozdz tell him we was right, he said he was down to a party the other night, at that time he was speaking and he said er, a lady jump down to the floor, because he hired one of her cooks, and they told him she had cook for ten years and told him to turn her off and let her work in the night or something, where she could come back and continue working for her.

Q Did he say who it was?

A No, hedidn't say who it was. I didn't ask him.

Q And you all objected to the use of the Wonderlic test?

A Yes, sir.

Q What did you tell him you objected to about that?

A Well there was nothing in that test, that has anything to do with, um, with ,with picking the white meat from the black meat, and the bones from the chicken, and things like that, that test was very complicated, until sometimes, a lot of eighth grade, a high school graduate, much less eight grade, could not have passed some of those tests.

Q All right, and you objected to the educational requirements too?

A Yes, sir, we objected to the educational requirements, we told him we thought that, er, we learned through research work that the standard of negroes education was sixth grade in this community, this section of the country, and the average of white was a ninth grade, and so we had three strikes against us befoe we start, trying to, er, it is true that some folks managed to pass that test, but there is always exceptions. And then we saw him again about the hiring practices, and we asked him to let us review the plant. He told us previous to that, that, um, I forgot all he said, revew the plant, and we asked him on this occasion to let us review the plant, but he didn't do it. And so, he said he had to get authority from others, I guess Mr. Gardder or some of them, but we never did had the privelege of going through the plant. We wanted to see how they were hiring. And then we went on the second floor and I seen about fifty whites and about two colored persons, and we thought it wasn't a fair practice to hire. And so we filed a claim from the EEOC, and they sent an inspector down ---

Q Is this all something that came up in the meetings with Mr Partin?

A It was along in negotiations time, it wasn't all in one day or week or month, but various times at intervals that we went down and negotiate. And these things was going on during the time in between times. And they went down and inspect the plant and they came back and, the Government man came back and foundthat it was around --

Q Well, I don't want to know what the Government man found out. I am not interested in any meetings that were held in connection with charges. Were there any other meetings, anything else said in these meetings that you had with representatives of Campbell Soup Company when you were acting on behalf of these people, that you remember.

A Well, that cover about all, but er, my feeling was hurt very bad at one time, we asked to review the plant in the second to last meeting and he said he would let us review the plant the next time, and the next time, well the time before the last time, when we was together, he said that Bobby Palmer represented some people and Reverend James represent our people, he asked who was the leader and we told him that we all was together, we all were one, we all represented the people together, and so when we asked to review the plant he said he would let us know the next time. And it wassupposed to be the next week, and he would phone us up two or three days later and tell us come down there, and we went --

Q Who phoned you?

A It came from the office, I don't know exactly who was on the o her end of the phone. I didn't receive the message, I think Reverend Lewis received the message. And we were invited and we went up on the second floor in the conference room and we all had expectations ---

Q I am not asking what your expectations were, I am not interested in that Mr. Parham. What happened when you got there, not what you wanted to happen or what you thought was going to happen.

A Well when we got there, Mr. Gardner met and he told us um, he thought, um, that, there was other organizations, said um, he said he didn't care to have our presence, he never did care to meet with us any more, and dsmissed us.

Q He said he didn't care to meet with you any more?

A That's right.

Q All right, now during these times that you all made these visits at the plant, did you all have, ever request that a negro ~~b~~ employe be used to give these Wonderlic tests?

A No, we request once that a negro be used in the personnel department.

Q Was in fact a negro employe put into the personnel department?

A Not to my recollection.

Q Did they put a negro employe in there to handle the Wonderlic test?

A Not that I know of, I didn't get that information.

Q Now there has been some testimony that some of the people who applied for jobs out there made a trip to Washington, to see the EEOC. Did you go on that trip?

A Yes, I did.

Q I show you a document marked defendants' exhibit number 10 for identification, and ask you to look at that. Have you had an opportunity to examine that document?

A Yes, I have.

Q Can you identify this document?

A Yes, sir.

Q Can you tell us what it is?

A That is one of the complaints I believe, that we filed in Washington.

Q Is this your signature that you placed on the second page of this exhibit?

A Yes, it is.

Q all right, that's your writing.

A Yes, sir.

Q All right, at the time that you signed your name to the second page of this document, was the first page with it too?

A Yes, the first page, we read the first page.

Q You read the first page of defendants' exhibit number 10, and then you signed the second page, is that right?

A That's right.

Q Now at the time you signed this, did anybody ask you to raise your hand and swear you were telling the truth, the whole truth and nothing but the truth, or anything to that effect?

A I can't recollect, I disremember that.

Q You know a lawyer by the name of Dorothy Sampson?

A Yes, I know her.

Q Is she the one that prepared the first page of this exhibit?

A I can't tell who prepared the first page, I will be frank with you, but I know I signed it, because it was read to me.

Q All right, at the time you signed it were there only two pages?

A As far as I can remember it was only two.

Q All right. Now this is dated on the first page, October 4, 1966, and on the second page it is dated October 4, 1966. Is that approximately the date that you signed that?

A Just about the day, yes, sir.

Q Now after you, where did you sign this, where were you? Were you all at a public meeting?

A I think we were at a public meeting.

Q Where was the meeting held?

A Let me see now, I believe that meeting was held at the community information center.

Q That is here in Sumter?

A Yes.

Q You know appeoximately how many people were there?

A It was quite a few there.

Q Was Reverend Lewis there?

A Personally, um, I, I don't know of any particular that was there, I couldn't definitely say he was there, but normally whenever we gather together, and anybody want to help the people give information to help the people, Reverend Lewis usually be present.

Q And I believe you said that Dorothy Sampson was there, or was she?

A Well if it was her writing, she must have been there.

Q Now before you signed this were you interviewed by anyone about what your complaints were with Campbell Soup Company?

A Yes.

Q Who was that?

A There was two gentlemen from Atlanta from the EEO, that came down, I think that's right.

Q When you signed this?

A No, let's see, er, repeat your question please.

Q Were you interviewed by anyone before you signed it, as to what your complaints were with Campbell Soup Company.

A Was I interviewed by anyone, as to what my complaint was against Campbell?

Q Before you signed it.

A Well Miss Sampson, was I interviewed by anyone, you say?

Q Yes, including Miss Sampson.

A Well just a, a er, congregation was there, we did our complaint and had it write up.

Q Have you ever applied for a job down at the South Carolina Employment Security Commission?

A I may have once in my life, sometime down the line, but I can't recall.

Q You don't recall having ever done it?

A No.

Q And you have never had any experience with them delaying your referral out to any company, have you?

A No, I went there one time to sign up for a job, that was about two years ago, and a gentleman was there, he was an elderly gentleman, and um, I was to get a job, apply for a job at Exide Battery, before Campbell Soup, and he approach me, hello big boy what can I do for you, and I said I want to apply for a job, and he say no old man like you, and he was much older than I was, and he was working, and I got disgusted and turned around and walk out.

Q Did you ever go to Campbell Soup, in connection with you trying to get a job at Campbell ~~Sup~~ Soup, did you ever go down to the South Carolina Employment Security Commission?

A No, because when I --

Q That is all I wanted to know, I don't want to know why. You didn't?

A No.

Q And the South Carolina Employment Security Commission was not used to receive your application for employment at Campbell Soup Company?

A No.

Q All right. Now after you signed this charge, which is defendants' exhibit number 10 you all then went to Washington?

A Yes.

Q All right, during the meeting, when these signatures were placed on defendants' exhibit number 10, did anyone stand up and read alloud what was written on page number 1 of this exhibit?

A Will you summarize that, the end.

Q When you all were in this public meeting when you signed this defendants' exhibit number 10 here, did anybody stand up and read what was on the first page of that exhibit before you all started signing.

A Yes, it was understood by everybody before it was signed.

Q How was it understood?

A Well it was read and explained and folks, er --

Q Who was doing the reading and explaining?'

A I can't recall exactly, it was a place that that was signed, and if I could I would tell who was speaking, but I, I am sure that it was some of the minister, some minster was explaining it and reading it.

Q You are sure that before the people started signing it somebody stood up and read the first page?

A Yes, and, they always do that.

Q All right, now do you know Annie Mae Goings?

A I don't think I do, I don't know.

Q You know Virginia ---

A Not by name.

Q All right, you know Virginia - well, do you see her here, Annie Mae Goings?

Mr. Finney: She is not here right now. You want to stipulate that those people were at the meeting when that was signed?

Mr. Deakins: Yes.

Mr. Finney: Not that it was read but that it was signed at the same time he signed it. Those who were plaintiffs, and who testified, signed at the same time.

Mr. Deakins: Yes.

Q (By Mr. Deakins) Now then you all went to Washington?

A Yes, sir.

Q Who did you talk to up there?

A Oh, that is a question. What get me confused, those initials, EEO and EEP and all that, what get me confused, but we seen quite a few folks, we saw, er, the head lady at the Red Cross, the head lady, in the, specially the contract between Campbell Soup and the Governenment, we saw the ---

Mr. Finney: Just one minute that is the, what is it, the OFC, I think.

A And we seen a detective, the head of the detective department, I couldn't tell where all, we been busy from the time, two days we was there, we eat one meal. We been going from place to place, meeting to meeting.

Q What did you tell these people? Did you give them this defendants' exhibit number 10 at that time?

A Well maybe the ~~xx~~ words was different, but just what we telling you now, that what we tell them.

Q You told them what your complaints were against Campbell ~~Smmkx~~ Soup Company?

A That; right.

Q Well did you delver, or file defendants' exhibit 10 up in ~~Wkm~~ Washington with those people?

Mr. Finney: Objection, we take the position that is an objectionable question on the basis of defendants' exhibit 10' speaks for itself, there is no indication on it thatit has been iled with any government agency. If you want to ask him if he personally gave it, he might be able to answer that.

Q (By Mr. Deakins) While you were in Washington, were you present when this defendant's exhibit number 10 was given to any government person? Do you know of your own knowledge whether it was given to any governmeht person in Washington?

A Well each place, where we visit, that was someone like you, want to know the complaints, and we relate the complaints to them.

Q All right, but did any person that you talked to in Washington, did you take these two pages of defendants' exhibit number 10 and give it to anybody up there?

A Well no, the conversation was mostly verbal but they took notes.

Q I know you, you talked to them and you told them your complaints, but you all had this defendants' exhibit number 10 with you?

A Yes, we had some, I am trying to recall, I don't remember who we give it to or did we give it to anyone, but we had individual handwritings up there with us, took them with us, and whether we leave them there or not I don't remember.

Q All right, do you know which one in your party had defendants' exhibit number 10? Were you personally carrying it with you, or did Reverend Lewis have it or who had it?

A Well I think that most of the the, the, er, manuscript was carried by Reverend Lewis.

Q Well did Reverend Lewis have defendants' exhibit number 10?

A I don't know it by that name.

Q Ok, you didn't have it?

A I didn't have it, no.

Q Mr. Parham, have you ever taken a manual dexterity test?

A Not to my recollection.

Q Or what has been referred to here as the finger test?

A No, I didn't.

Q It was brought out in these meetings that you had with these representatives of Campbell Soup Company that one of the job requirements was you had to pass the manual dexterity test?

A That's true.

Q And you never took it?

A No.

Q Is your correct birthdate August 8th, 1920?

A That's right.

Q Have you ever taken the Wonderlic test?

A No, I have not. I have never seen one of those tests. I have seen all types of tests, in college, and tests in the army,

IQ tests, many different type of tests, but whether it is the same type as Campbell Soup, I don't know.
Q You were in the armed forces?
A Yes, I was.
Q What service were you in?
A In the army, ack ack outfit.
Q While you were in the service did you have to take what they call aptitude tests?
A Yes, sir.
Q To show how smart you were?
A Yes, sir.
Q How did you do on those tests?
A I came out average.
Q And of course, you are a college graduate, aren't you?
A Yes, I am.
Q What college did you graduate from?
A Tuskegee Institute, Alabama.
Q And you passed while you were there, you got a degree?
A Yes.
Q And I assume that you had been in the public schools?
A I have.
Q Right here in Sumter?
A Yes.
Q And I assume that all through your education you took various types of written xxxxx tests?
A Yes. sir.

Q And you have had courses in mathematics?

A Yes, I have.

Q And english?

A Yes.

Q Reading

A Yes, sir.

Q Now Mr. Parham, have you ever been given any instructions by anyone such as Reverend Lewis, as to how to answer questions on the Wonderlic test?

A No, I never have.

Q Have you ever been at meetings where anyone has had a Wonderlic test form and explained what the questions are and given you the answers?

A Repeat that now?

Mr. Rachlin: We object to the question.

Q (By Mr. Deakins) Have you ever been in any meeting with anyone who stood up with a Wonderlic test form and explained to you how to answer the questions?

A Now I have seen I think, a test, when we was in Washington, I think someone had a test there, what it was like, and I saw it, you know, some of the questions on it.

Q You know who it was that had that test?

A Somebody in Washington.

Q Oh, this was some of the Government people?

A Yes.

Q Down here in Sumter, have you ever been to any meetings where there were instructions given?

A No.

Q Have you ever been given any physical examination by Campbell Soup Company?

A No, never have.

Q Have you ever had any serious injury or illness?

A Yes, I have been in accident,s car accidents.

Q All right, did you suffer any disability that would keep you from doing your work?

A I never suffered no disability to keep me from working, no. You mean suffered disability, due from accidents, that what you are referring to?

Q Or illness.

A Well illness, I suffer with diabetes.

Q Do you still suffer from it?

A Yes, it doesn't handicap me, disability, from work, but I do, he said it is a type that you, um, not the disability type.

Q Well were you suffering from diabetes when you filed your application with Campbell Soup Company?

A Yes, I was, the last two or three years, I have been, suffered from it.

Q Did you tell the people at Campbell Soup that you had this problem?

A No, I didn't tell them, I never had a chance.

Q Do you have any other serious physical problems?

A No, sir.

Q All right, now Mr. Parham, you are claiming that Campbell Soup Company has discriminated against you, is that right?

A Yes, sir.

Q Now what do you base that claim on?

A Well, I didn't get a change to, well, to prove what, that I could do or couldn't do, I never got a chance to take the test or, the physical, or nothing. It just, I signed the application ahd never heard from them since.

Q Your complaint then is that they just haven't called you up to take these things, test, or anything else?

A That's true.

Q Any other reason for your claim that you are discriminated against?

A Yes, sir, as I told you being a leader, other folks, er --

Q I am not interested in other people. I am interested in you.

A Well, personally, I feel that, personally, they discriminate against my race, my personal feeling.

Q No, I am asking you, you have filed a complaint, and you claim that Campbell Soup Company has discriminated against you, right?

A Collectively, if you are speaking of as a race, yes, as a whole.

Q Your claim is they have discriminated against you personally.

Because you are a negro.

A That's true.

Q And you base that claim on the fact that they never have called you in to take any of these tests?

A Well, I would say, yes and no, because why I base the discrimination against me, due to the fact, I know that they need good plumbers out there, good craftsmen out there, and, because I speak with some of the plumbers that work out thre and have trouble, they have trouble out there all the time, and they need a good craftsman out there, and I think why they discriminate against me, because I put down there for a decent salary, I put down $3.00, $3.50 or more an hour, and ever place I work I get $3.00 to $5.00 ah hour for my work. And I know somegirls working down there now that I took down there when I put in my application, they are working down there now, taken their physical and heard from theirs, and havebeen working down there but I have not even heard from mind.

Q But you consider, you feel like you were discriminated against because you requested $3.50 an hour?

A Yes, sir.

Q Is there any other reason, as to why you have been discriminated against?

A Yes, sir, if I have to go, to go through those tests, I figure I have been discriminated upon. I figure I had two strikes against me before I start.

Q Do you have any reason to believe that you could not pass the Wonderlic test?

A Wel there is some of them that been out there with a college education that didn't pass it.

Q Who?

A Well I couldn't call the names, but there is some folks that I know that were out there that said they didn't pass it and finished high school and had college courses, and didn't pass it. Not graduate from college but had college courses.

Q Where are those people from?

A Well Mr. Gwozdz can tell you himself, he --

Q Now, who do you know, with a college education, or had college training that didn't pass?

A Well attorney, just a few folks here that harden their hearts to come and testify up here, but there is thousands of people I know of that had problems out there that are afraid to come.

Q Mr. Parham, I am not interested in any speech you have to make. I want you to answer my question. My question to you now is do you know of anyone that has had college training that flunked that Wonderlic test at the Campbell Soup plant.

A I would/n't like to call their names.

Q Do you know of anyone with college training that has flunked the Wonderlic test?

A I can tell you this, I know one but I would not call their name.

Q I am going to ask you now to call that name.

Mr. Rachlin: I object to the question.

Q (By Mr. Deakins) Iwant the name of the one person you= know that has had college training that flunked that Wonderlic test at the Campbell Soup plant.

A I can give you the name if you will allow me about forty-eight hours, I will give you the name.

Q Why do you need the forty-eight hours?

A It will take that to get it.

Q You don't have the name? You can't recall the name?

A No, I can't.

Q Well you are under subpoena to be here, and so I will recall you.

Mr. Rachlin: You are assuming that you are entitled to the information.

Mr. Deakins: I have asked the question.

Mr. Rachlin: That doen't mean you are entitled to the information.

Mr. Deakins: I am entitled to ask this man that question.

Mr. Rachlin: But you are not entitled to the information.

Q (By Mr. Deakins) You can't recall the name now?

Mr. Rachlin: I object to the question as being improper.

A No, sir.

Mr. Rachlin: Has no relevancy in this case. He was not permitted to take the test and that isn't the issue and your question is irrelevant.

Mr. Deakins: I have no further questions at this time.

EXAMINATION BY MR. FINNEY

Q I think you wrote on your application you desired $3.00 and you said in your testimony that you desired $3.00 an hour?

A Yes.

Q You desire a lot of things, don't you?

A Yes.

Q That you don't get?

A Yes.

Q And if they had offered you a salary lower than that would you have considered it?

Mr. Deakins: I object.

A Yes, I would.

Q And reading this line here, it says pay expected, is that right?

A That's right.

Q It didn't say the pay you demanded?

A No.

Q Mr. Parham, didn't you attend a meeting at the Chamber of Commerce when Campbell Soup Company first made the announcement it was coming to Sumter?

A I did.

Q And you, were you invited to that meeting?

A Yes.

Q And didthey discuss the fact that Campbell Soup Company was going to have a poultry operation in Sumter County?

Mr. Deakins: I object to all this line of questions.

A Yes.

Q (By Mr. Finney)

Q Was there an official of Campbell at the meeting?

A He was.

Q And did he explain that there was jobs for poor, job opportunities for a large number of poor untrained people in this community?

A He sure did.

Q Did he say that the negro community could take advantage of many of the opportunities available at Campbell?

A He did.

Q And this was before anything was done by Campbell, there was a meeting at which Campbell Soup was discussed from the point of view of employing poor, untrained people?

A That's right.

Q And it was said there would be a large market for untrained labor?

A That's true.

Q By the oficials of Campbell Soup and by the Chamber of Commerce of Sumter?

A Ye, sir.

Q Do you remember who attended that meeting? Was I there?

A You were there.

Q Was Reverend James there?

A Reverend James, and this man out there, Bobby Palmer, and quite a few.

Q A number of negroes of Sumter were invited to that meeting?

A Yes.

Q Now did in any of your conversations with Mr. Partin or Mr. Gwozdz or any other official of Campbell Soup, did they tell you if you didn't have an eighth grade education, or score 11 on the Wonderlic test, you were no longer considered?

A Eligible.

Q Now long eligible to work there?

A That's right.

Q Subject to my objections entered yesterday and today, concerning the meeting, I want to ask you this question. Why did you have the first meeting with Mr. Gwozdz and Mr. Partin? You remember Mr. Deakins asking the question and he wouldn't let you tell why you had the meeting?

Mr. Deakins: I object to that question why did you have the meeting.

A Because the community as a whole in Sumter, thought it was against their word, they were looking forward to being hired, and better their condition of living. And in most ~~xxxxx~~ times, when you get the news, it was twenty-five to thirty ~~thies~~ whites and two colored.

Q So the community, your feelings in the community was that a large number of unskilled people expected to work?

A That's right.

Q And you met with the plant to discuss ways of getting around this situation?

A That's right.

Q And didn't at some of your meetings, weren't there representatives of the ministers?

A Yes.

Q Weren't there members of the NAACP there?

A Yes.

Q And wasn't there a representative or member of the Masons ther?

A Yes, sir, Masons there to.

Q Wasn't the Sumter Civic League there?

A Yes.

Q All these were groups of inteeested negro citizens in the coomunity?

A That's right.

Q And they met with the plant manager at the Campbell Soup plant?

A Yes.

Q Until the meetings in which Mr. Gardner said he did not want you back there any more?

A That's right.

Q Subject to our objections to the introduction of that document there, Mr. Parham, do you know of your own knowledge whether or not the South Crolina Employment Security Commission has been ~~invested~~ investigated for discrimination?

Mr. Deakins: I object to that.

A Yes, they have been.

Q Was there a complaint filed by some citizens of Sumter against that agency"

Yes, it was a complaint filed.

Mr. Deakins: I object to this whole line of questions.

Q (By Mr. Finney) As a result of that complaint, did not officials of the FBI come here and talk with citizens about the employment office?

A Yes, they did.

Q Did not officials of the Labor Department, or some other agency come in and talk to the people about it, the employment office?

A Yes.

Q And did they have meetings with those people, at the community information center, who had complaints against the employment office?

A Yes.

Q Was this before Campbell Soup had started processing the applications through the employment office?

A It was since then.

Q Now which was since? Which happened first, in other words.

A The first, repeat that now.

Q Which happened first, the charges against the Employment Security Commission o the Campbell Soup beginning hiring and employing in June of last year. Campbell has been open about a year, right?

A Yes, it was before.

Q It was before the charges were filed, and the investigation made?

A Yes.

Q And since those charges were filed and the investigation made, has the South Carolina Employment Security Commission out of Columbia~~x~~ hired a negro, a Mr. Weston?

A Yes.

Q Did he come in and talk with the local citizens of Sumter?

A He sure did.

Mr. Deakins: Weston?

Mr. Finney: Yes, sir.

Mr. Deakins: Hired by the South Carolina Employment Securituy Commission?

~~A~~ Mr. Finney: As a minority representative.

Mr. Deakins: I am interested in knowing when that was.

A (By Mr. Finney) Do you know when he was hired?

A I couldn't tell you the exact date.

A

Mr. Deakins: Can you say approximately?

A It was before June.

Mr. Deakins: Was it before Campbell Soup started hiring?

A Let's see, a lot of things happened since last year, I get confused. It was before Campbell Soup started hiring when he came down to our office.

Mr. Deakins: Before Campbell Soup started hiring?

A Yes, it was before, or along that time, I can't recall the exact date.

Q (By Mr. Finney) I will say that this man does not work in the local office, he is a State field specialist for minorities. Showing you the application, identified as defendants' exhibit 23, I will ask you to read the word up in the upper lefthand corner of that document.

A It is "good".

Q Did you write that on there?

A No.

Q You don't know whether this is a Campbell Soup appraisal of your qualifications or not, do you?

A No.

Q That that is "good" on there?

A Yes.

Q And do you feel that Campbell Soup refused to process your application any further because you were a negro?

A Yes, sir, I do.

Mr. Deakins: I object to that.

Q (By Mr. Finney) Basing that on the fact you applied back in May 30th, 1966?

A That's right.

Q And you have not heard anything from them since then?

A That's true.

Q You have not been called in for any tests or examination or anything?

A Nothing.

Mr. Finney: No further questions.

EXAMINATION BY MR. DEAKINS

Q Mr. Parham, you stated on your application that you desired pay of $3.00 per hour or more. Did you evertell any representative of Campbell Soup Company you would be interested in a job for any less than $3.00 an hour?

A I never got a chance, I never been called.

Q Then you did not?

A No.

Q Now you attended this meeting of the Chamber of Commerce, I believe, where some represantative of Campbell Soup was there?

A Yes, sir.

Q Do you know who that was?

A Somebody, say, er, Mr. Gwozdz was there, but I don't remember him at that time.

Q ~~Yes~~ He is not the man you are speaking of then?

A No, sir.

Q You don't remember this man's name?

A No, I don't.

Q You remember what he looked like?

A He came from er --

Q New Jersey?

A New Jersey.

Mr. Finney: I can identify him to some extent, I was there. I believe he was in charge of poultry production, whoever that was, and another, I don't remember the other one at all.

Q (By Mr. Deakins) Now what did this man say at this meeting about who was going to be hired?

A He said they was going to hire the poor and that, you stoppedme me when I tried to tell you at first ---

Q No, I didn't get a chance to stop you.

A That where I got my idea about the poor would be hired, I couldn't give you exactly the words, but I know that I went back in preaching a lot of times to people, and talking, but it wasn't the exact words, but the meaning was the same.

Q He didn't say, we are going to hire the poor, you interpreted what he said, is that right?

A Yes, I believe the poor what work for $1.40 an hour, would be the poor, and lookin forwards to that, and it was better than some of the poor was getting here.

Q What else did he say?

A Well he said it was an asset to this community.

Q He said it would be an asset to the community?

A Yes.

Q And what else did he say?

A Well I couldn't remember all the things that was said, I don't remember everything that was said. I know I heard, when I heard it again it come to be natural, but, I know I heard him once before, but I don't remember now.

Q Well isn't it, without actually recalling exactly what he said, wasn't he just making statements about what kind of operation it was going to be, and what kind of work they were going to be doing?

A Yes, sir.

Q And what he said about those things encouraged you?

A Yes, wanted to be a part of it.

Q And isn't it, can I summarize your complaint when you went out there on behalf of these other people, you weren't going out there on behalf of yourself, but on behalf of these other people, when you were going out there with Reverend Lewis and these other people, xxxxx complaining on behalf of these other people that wanted to go to work out there, you all were complaining against Campbell Soup doing anything that would prevent these low educated people from getting a job out there?

A We were complaining that Campbell was doing anything to prevent them, you say?

Q You were complaining, you didn't want Campbell Soup to do anything which would be a barrier to any of these low educated people getting jobs, did you?

A That's right.

Q Now matter how qualified they would be?

Mr. Rachlin: Objection to the question.

A We thought probably at first that, um, by the plant coming like Campbell, it did not understand the people in the community as a whole and we thought negotiating with them and getting them to find the right kind of people, but if they start hiring the whites, the proportion to the colored was so great, we felt they couldn't find a better type of negoes to hire, and so, we being amongst the youth, we thought that probably we would know them andbe a help to the plant, to picture out and recommend some of the folks we know that would be a help and asset to the plant. That was what our negotiations started towards.

Q Well did you want Campbell Soup to hire as many of these people had worked all of their lives as maids, as they hired people who had worked in industrial plants and had industraial experience?

A Well, um, the way we see it, that um, picking chickns off of bones and stuff like that, it don't require a PHD to do that, because our people as you know, are some of the world's best cooks, and most of them, if you search down the line, they can't read or write, but they are good cooks, and they are masters at picking chicken and picking the meat and stuff off checkens and stuff like that.

Q And they can't read?

A No. Lot of them can't read and write.

Q Couldn't read anything they put on the bulletin board out there?

A During the army days we had some in our outfit couldn't read and write, but they had manus, come down from Washington, and I never known of a case where the food was short or lacking, and a lot of them not being able to read the menus.

Q All right, so you wanted Campbell Soup to hire people out there that couldn't even read and write.

Mr. Rachlin: This is argumentative, has nothing to do ---

Mr. Deakins: All right, I withdraw the question. It is argumentative. Subject to this witnes being recalled I have no further questions.

EXAMINATION BY MR. FINNEY

Q You wanted Campbell Soup to hire people who could do the job?

A Yes.

Q And you desired that negroes be given a fair chance to do it?

A That's true.

Q And you knew the eight grade education would disqualify over half the negroes in the Sumter, in Sumter County?

A That's right.

Q And you knew the advertisements and meetings before, had not said anything about education or the Wonderlic test?

A That's right.

Q Because you recognized, and you felt, when Mr. Deakins asked you, the community was aware of the fact that there were certain health standards that had to be met?

A That's right.

Mr. Binney: Nothing further.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

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IDELL D. KINGWOOD, ET AL, ) CIVIL ACTION NO.

PLAINTIFFS, ) 67 - 187

VS ) **DEPOSITIONS**

CAMPBELL SOUP COMPANY, INC., ET AL. )

---

FOLIO NO. 3.

PAGES 417 - 630.

L. B. Wimberly, Reporter,

Sumter, South Carolina.

MRS. HATTIE MAE MCCOY

was duly sworn and testified as follows:

EXAMINATION BY MR. DEAKINS

Q Is it Mrs. or Miss?

A Mrs.

Mr. Deakins : I would like to have the Reporter mark this document as defendants' exhibit number 24 for identification.

(Document referred to is received as defendant's exhibit 24 for identification)

Q (By Mr. Deakins) I would like to show you a document which has been marked as defendants' exhibit number 24 for identification, and ask you to look that over.

Mr. Finney: Can we stipulate that that is her application --

Mr. Deakins: We will stipulate that defendants' exhibit ~~n~~ number 24 is the application filed with Campbell Soup Company, and her signature appears on the reverse side of the document.

Mr. Finney: So stipulated.

Q (By Mr. Deakins) We have agreed that this is the application that you filed with Campbell Soup Company for a job. Now, besides defendants' exhibit number 24, had you ever filed any other application for employment to Campbell Soup Company?

A Yes, I filled out one at the employment office.

Q Did you turn that application in at the employment office?

A No, I filled this out at the plant.

Q You are speaking of that ~~exhibit~~ defendants' exhibit number

24, you filed at the plant?

A Yes, sir.

Q And you filled out and filed another at the State Employment office?

A That's right.

Q Now did you leave that one there at the employment office?

A Yes.

Q You didn't take that one out to the plant?

A No.

Q At the time you filed that application at the State Employment office, you were applying for a jobanywhere at that time?

A Yes.

Q So that really was not just an application for employment at Campbell Soup Company, that was anywhere the employ ent office would refer it?

A Well no, to the plant, Campbell Soup, the application that I filled out for Campbell Soup was for Campbell Soup job.

Q Right, the one you are holding in your hand.

A Yes.

Q I am not talking about that one now, I am talking about the application you filed at the State Emplboyment office, that was an application for a job anywhere in the area, wasn't it?

A No, that was for Campbell Soup.

Q Did you ask the State Employment agency to refer you to Campbell Soup Company?

A Yes.

Q What did they tell you?

A They tell me to go to Campbell Soup and fill out an application.

Q And then you went down and filed, filled out and filed defendants' exhibit number 24?

A That's right.

Q Was there any, did you encounter any sort of difficulty or problem in getting the State Employment agency to refer you to Campbell Soup Company?

A No, I didn't.

Q They were willing, they willingly referred you out there?

A That's right.

Q Now you will notice in the lefthand portion of the application, near the top, under the date, you only have put 23, you see that?

A Yes, I see that.

Q Is that your writing, the 23?

A No, it is not.

Q It is not your writing? Over here, where the date is, beside it in pencil is 23.

A That's my writing.

Q Now you filled out all of the application where it is written in pencil on both sides, with the exception of the word "fair" in the righthand corner, is that right?

A That's right. And except for this.

Q Yes, that blue ink part, you didn't write that in.

A No.

Q You didn't write in any of the blue ink in any of the application?

A No, I didn't.

Q Now I notice Mrs. McCoy, that on the date you just put 23, can you tell me the date you filled out and filed that application?

A It was in the last part of May.

Q Well would the 23, would that be the day of the month that you filed it?

A It must be.

Q Would it have been May 23, 1966?

A That's right.

Q And that is the only application you filed at Campbell Soup Company, at the plant?

A That's right.

Q Now at any timebefore you filled out and filed that application, defendants' exhibit number 24, had you had any earlier communication with Campbell Soup Company, or is this the first time you came in contact with it?

A This the first time I come in contact.

Q And did you fill out this application at the plant?

A At the plant.

Q And who did you turn it in to?

A I turned it in to a girl.

Q All right, can you describe her for us?

A She was a little slim girl.

Q A young girl?

A Yes.

Q Would you say in her eary twenties?

A I would say so.

Q You remember the color of her hair?

A No, I don't.

Q Now at the time you turned in the application were you interviewed by anyone?

A Yes, I was.

Q By whom wre you interviewed?

A Mr. Partin.

Q The man sitting here with us?

A Yes.

Q Tell me basically what your discussion was with Mr. Partin at that time.

A ~~Wxx~~ Well he take me back in a little private room and he discussed that, how much the wages would be.

Q What did he say the wages would be?

A $1.47 an hour and $1.50.

Q All right, what else did you talk about?

A And he told me that he would probably be hiring eighty(?) people every week.

Q And this was in May of 1966?

A Yes, sir.

Q Now this was before the plant was opened, is that right?

A That's right.

Q What else did he say, did he talk about your application?

A No, he just tell me, asked me how old was my oldest child and how old was my youngest.

Q Q And how old is your youngest?

A My youngest is two and a half.

Q How old is your oldest?

A Fourteen.

Q Did you see Mr. Partin writigg anything down on your application, as he was going along?

A Yes.

Q What did you see him write down?

A I don't know.

Q But you just noticed that he was writing something?

A Yes.

Q Was he writing with a fountain pen?

A Yes.

Q Did he ask you if you had any relatives working for the company?

A No, he didn't.

Q Anything else you and Mr. Partin discuss at that time?

A No, I can't remember now.

Q Now I notice Mrs. McCoy, onyour application, under the, in the middle of the front page there where it says previous employment, you see that?

A Yes.

Q Have you not had a job anywhere?

A No.

Q You never worked before in your life?

A No, I was in New York, and I worked for three months up there.

Q This was before you filed your application?

A Yes.

Q Why didn't you list that there?

A Well I thought it wasn't necessary, bedause it was so short a time.

Q Did you tell Mr. Partin that you had worked up in New York?

A No.

Q So on your application you showed no previous employment?

A That's right.

Q And you told, you didn't tell Mr. Partin anything different?

A No, I didn't.

Q Now is that job up in New York for three months the only job you ever had?

A The only one.

Q Who were you working for up there?

A Well, I can't remember the name of the company.

Q What were you doing?

A I was er, sorting out material, fabric.

Q What were the circumstances of your leaving? Were you

Were you discharged?

A No, I was pregnant.

Q How long have you lived in the Sumter area?

A All of my life, until this.

Q You were in New York just afew months?

A Yes.

Q At the time you applied for this job up in New York did they give you any sort of physical examination?

A No, they didn't.

Q Did they give you any sort of test?

A No test at all.

Q Now I notice that on your application you say, in case of emergency notify Oliver McCoy, Jr.

A That's right.

Q Who is that?

A That is my husband.

Q You have no reason to believe your husband would give you any sort of a bad reference at Campbell Soup Company?

A No.

Q He would be glad for you to get it?

A That's right.

Q I notice on the reverse side you list three character references, and one is Margaret Wright, who is she?

A She is a friend of mine.

Q And another is Lou Sharp, who is that?

A She is another friend of mine.

Q And another character reference you list is Mary Sue, what is that name?

A Allen.

Q Who is she?

A She is a friend of mine.

Q So as character references you list three friends of yours?

A Yes.

Q Do you have any reason to believe that any of these three friends of yours would give you a bad character reference?

A No, I don't.

Q Do you have any information that any of these three friends of yours were contacted for a reference by ~~Campbell~~ Campbell Soup?

A No, I don't.

Q Do you have any information that your husband was contacted by Campbell Soup for a reference?

A No, I don't.

Q Do you have any information that anyone at Campbell Soup checked your application out with any other person?

A No, I don't.

Q Now in your answers to interrogatories, which your attorney filed and you swore to, you said in answer to number 17, that on information and belief you thought that the practices and procedures of this company, which tended to discriminate, involved the method of reference checks. Do you have any knowledge as to the method of reference checks of this company?

A No, I wouldn't know.

Q Do you have any knowledge that they have made any reference checks on you wnatsoever?

A No, I wouldn't know.

Q Now after you filed this application for employment with Campbell Soup Company and you turned it in to this lady out there and you had a discussion with Mr. Partin, is that right?

A Yes.

Q After that did you have any other communication with anyone at Campbell Soup Company?

A Yes, I was back out there about two more times.

Q Now let's talk about the first time you went back out there, about when was that?

A That was in, um, in August.

Q In August of 1966?

A Yes.

Q Now that would have been after the plant had gotten started?

A That's right.

Q Did you go to the personnel office?

A No, I didn't go to the personnel office, I talked to a man on the outside.

Q Who was that?

A I don't know, he was some fellow with some kind of a cap on his head.

Q Was he the only one you talked to while you were there?

A During that time.

Q And you don't know who it was?

A No, I don't.

Q What was your discussion with him?

A I asked him could I speak to the manager, and he say the manager wasn't in there.

Q This was on the outside ofthe plant?

A On the outside.

Q Were you out on the sidewalk?

A Yes, on the sidewalk.

Q Can you describe what this man looked like?

A Well he kind of tall.

Q You don't know his name?

A No, I don't know his name.

Q Was that all the conversation?

A That's all.

Q And you turned around and left?

A Yes.

Q You did not go into the personnel office?

A No, he said it was close up, it was in the afternoon.

Q What time in the afternoon?

A About four-thirty.

Q Did you try to see if you could get in?

A Yes.

Q Was it closed?

A Yes.

Q Ok, let's try your second visit, when was that?

A After I talk to this man?

Q Yes.

A This was in, December.

Q December of 1966?

A Yes.

Q Did you go to the plant again?

A Yes.

Q Who did you talk to then?

A Well I talk to Mr. Partin.

Q There in the personnel office?

A Yes.

Q Did you ask ~~[illegible]~~ somebody if you could talk to Mr. Partin?

A Yes.

Q Who did you ask?

A A girl.

Q And she turned you over to Mr. Partin, right?

A That's right.

Q Was your discussion with Mr. Partin in a private office?

A That's rright.

Q Tell me what that discussion was.

A Well I told him that I was out here in the office and I come back to see if I could get a job, I needed it.

Q What did he say?

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A And he say he didn't have any opening during that time and he tell me to keep coming back.

Q All right, anything else?

A No.

Q Now when did he say he didn't have any openings?

A When I went out there the last time.

Q Well I mean, did he tell you when he had not had an opening, was he saying I don't have any openings now?

A Yes.

Q He wasn't saying I have not had any openings since you were out here a month, or months ago?

A No.

Q But he told you I don't have any openings now but you keep coming back?

A Yes.

Q Was there anything else said during this discussion?

A No.

Q After that meeting with Mr. Partin, did you ever go back out there?

A Yes.

Q When?

A In January.

Q All right, who did you talk to then?

A Well I talk to Mr. Partin.

Q Did you ask permission again of one of these girls to talk to him?

A Yes.

Q And she ushered you in to Mr. Partin? And you talked to him?

A Yes.

Q Did you meet again in a private office?

A Yes.

Q Tell me about your discussion at that time.

A I tell him I was out there in December and he told me to come back, and Itold him I am back and I wanted to see if I can get work.

Q All right, what did he say?

A Well he said during that time, um --

Q Now he said during that time, or this time?

A During this time he didn't have any openings right now.

Q Well let, me, don't let me mislead you Mrs. McCoy, I want you to recall this as you remember it happening, but, were Mr. Partin's words to you, I don't have any openings now?

A Yes, I don't have any openings now.

Q He didn't say I have not had any openings since you were out here the last time?

A No.

Q What else did he say?

A And he said, you know what I am going up against.

Q Go ahead.

QA And um, that is about all he said, and he asked me, have you read in the newspaper, and I told him yes. And he said about the negroes saying that they didn't want to give the negroes any jobs.

Q Did he say that they were wrong in saying that?

A No, he didn't say it was wrong.

Q What did he ay about it?

A He just said that, you know what I am going up against.

Q Did he say anything about I am doing the best I can?

A No, he didn't say that.

Q Anything else said during thid discussion?

A No, I can't remember.

Q Did he tell you to come back again?

A Yes.

Q All right, he didn't say anything to cause you to believe that you shouldn't keep coming back out there

Mr. Finney: We object to the form of the question.

Q (By Mr. Deakins) Did he?

A No, hedidn't.

Q And he in fact told you to come on back out there again?

A Yes, he did.

Q All right, did you in fact go again?

A Well I called out there.

Q Who did you talk with?

A Talked to the girl.

Q When was that?

A When I called out there, about two ~~weeks~~. times

Q During what period of time?

A One of the times was last week.

Q When were the other times.

A The other time was in August.

Q Well, August of 1966?

A That's right.

Q Then this was before your meeting with Mr. Partin?

A Yes.

Q Who did you talk to in August?

A A girl.

Q What did you ask her?

A I ask her could I speak to the manager.

Q What she say?

A She say the manager wasn't in then.

Q Wasn't in there?

A Yes.

Q Now you talked to agirl in the office, and you talked to someone out there about a week ago, one of the girls?

A Yes.

Q And when you talked to this girl last week what did you ask her?

A I asked her could I speak to the manager.

Q What did she say?

A She told me, said the manager was busy, call back in about twenty minutes.

Q All right, did you?

A I called back in twenty minutes.

Q Who did you talk to then?

A I talked to a girl I guess, lady.

Q What did she say?

A She told methe manager still was busy.

Q All right, what else.

A And she told me to call back in fifteen minutes.

Q All right, did you?

A I did.

Q Who did you talk to then?

A I talked to a girl.

Q What was said?

A She told me to call back in about five minutes.

Q All right, did you?

A I did.

Q Who did you talk to then?

A A girl I guess.

Q What did she say?

A She told me to hold on.

Q All right.

A I hold on about twenty minutes.

Q All right, and then, they --

A They never did talk to me and I hang up and called back again.

Q All right.

A And she told me, she said, um, she said, um, hold on, and I hold on about five or ten minutes and then I get the manager. I told her I want to speak to the manager.

Q All right.

A And I asked the manager, that [illegible] was, I asked him, I was out there ---

Q Do you know who you were talking to? You know who the manager is?

A Mr. Allen. And I told him I was out there a week ago and he told me, said he was going to look these applications over and tell me to keep coming back.

Q How many times did you call out to the place?

A I don't know, four or five times before I finally get the manager.

Q Now in those conversations where you phoned out there that day before you got the manager, were you phoning and talking to this lady ever time, did you tell her who you were?

A Yes.

Q What did you tell her?

A No, I didn't tell her who I was until I get the manager.

Q All right, so in all these other discussions, when you just talked to the lady, you just said I want to talk to the manager?

A That's right.

Q You didn't tell her who was phoning?

A No, I didn't.

Q ~~Now other than these, you said in this conversation with~~

A No, I didn't.

Q Now other than these, you said in this conversation with the manager on the telephone, you had been out there about a week before?

A That's right.

Q Had you been out there the week before?

A I did.

Q In other words you went out to the plant about two weeks ago?

A Yes.

Q Who did you talk with then?

A I talked to a girl, she asked me what I want, I told her I want to speak to the manager. She told me to have a seat, and I sit down and the manager come and he asked me what I want, and I told him I fill out an application about a year agok and I wanted to see whether I could get a job, and he say come back in this little private room.

Q Who was that, was that Mr. Partin?

A No, it wasn't him.

Q It wasn't in the personnel office?

A Yes, it was in the personnel office.

Q You know who you were talking to?

A I was talking to Mr. :Allen, Ithink that the man.

Q What did he look like?

A He is a little young fellow.

Q What was your conversation with Mr. Allen?

A And I asked him, I said I filled out an application about a year ago and I wanted to check over it and see whether I could get a job out there.

Q All right, what did he say?

A And he told me, said um, he will look the applicationg over and as soon as he look it over he will send for me.

Q Did what?

A As soon as he look his application over he would send for me.

Q Are those the words he used?

A That's the words he used to me.

Q All right, what else did he say?

A That's all, I get up and come on out.

Q All right, now did you have any other discussion with anybody out at Campbell Soup Company, other than what you have told us about?

A No, I haven't.

Q Did anybody in any of the conversations with the people at Campbell Soup, ever tell you that you are just wasting your time coming out there?

A No.

Q Were you ever refused permission to fill out an application out there?

A No.

Q Now Mrs. McCoy, you have never wokked for any company that has been engaged in processing poultry, have you?

A No, I haven't.

Q Do you have any relatives working for Campbell Soup Company?

A No, I don't.

Q Have any relatives that have applied for work out there?

A No.

Q Do you have any friends work out there?

A No.

Q You know any people that work out there?

A Well, I know some people.

Q How many?

A About three.

Q Three people that work at Campbell Soup Company?

A Yes.

Q Are they still working out there?

A As far as I know.

Q Are they negroes?

A Yes.

Q Have you ever been arrested at any time?

A No.

Q Now Mrs. McCoy, did you ever take one of these manual dexterity tests?

A Yes.

Q When was that?

A I can't recall the exact date but I think it was in August.

Q 1966?

A Yes.

Q Now this would have been after you filed your application for employment at Campbell Soup Company?

A Yes.

Q Several months after?

A Yes.

Q Now where did you take this manual dexterity test?

A At the employment office.

Q The State Employment office?

A Yes.

Q Is that the test where you put the pegs in the holes and work with the washers?

A That's right.

Q Did you take that test with a group of other people?

A Yes.

Q Were you all given a certain amount of time to do this?

A Yes.

Q Were you all given the same amount of time?

A I wouldn't know, but during that time, yes.

Q Well you were all doing it together, weren't you?

A Yes.

Q And they stopped you all at the same time and started you all atthe same time?

A Yes.

Q Was there any campbell Soup Company representative there while you were taking the test?

A No.

Mr. Finney: Objection to the question.

Q (By Mr. Deakins) That you know of?

A No.

Q Well when you were taking this test at the State Employment office, did they give the test to you in any different way than theygave it to the other people who were taking the test?

A No.

Q All right, now after you got through takking the test, did the tell you whether or not you had passed or failed?

A Well they told me that I passed one part of it and one part I didn't pass.

Q Thereafter did you ever receive a postcard from them?

A No, I didn't.

Q I would like to show you --

Mr. Deakins: We will stipulate that she never received a postcard from the State Employment office.

Mr. Finney: All right.

Q (By Mr. Deakins) Now after these people out at the State Employment office told you you passed part of it and didn't pass part of it, and then you didn't ever get a card from them?

A No.

Q Did you ever tell Mr. Partin or any other representative of Campbell Soup Company that you had failed to pass the manual dexterity test?

Mr. Finney: Objection to the form of the question, and object to the question, as calling for a conclusion of this witness, that she had failed the test when she did not actually know.

Q (By Mr. Deakins) Did you ever tell any representative of Campbell Soup Company that you had not passed the manual dexterity test?

A Yes.

Q Who did you tell?

A A girl.

Q When was this?

A Sometime in August.

Q What did you tell her?

A I asked her, I said um, they say I didn't pass the test but I am looking for a job. She told me, she said well, if you didn't pass the test you can't get a job here.

Q All right, was she the only one you told that to?

A That's right.

Q When you were talking to this girl, was this in the personnel office?

A Yes.

Q What else was your conversation with her?

A Nothing else, I just turn around and come on out.

Q You didn't tell her who you were?

A No.

Q Well at the time you were taking this manual dexterity test at the employment office, did you notice anything unusual?

Mr. Finney: Objection, no showing tat she has ever taken the test but once, and she wouldn't have the knowledge as to whether or not it is normal. It is information which this witness would not be competent to give.

A No.

Q (By Mr. Deakins) Was there anything that happened to caused you to believe that the manual dexterity test was not properly given to you?

A No.

Q Now Mrs. McCoy, in the interrogatories and the answers to interrogatories that you signed and your attorney has filed in this case in your behalf, you said that, I believe that the manual dexterity test was not properly given. And you say this belief is based on my observations while the test was given, and the Equal Employment Opportunity Commissin's decision. Now do you have any information to support that claim, basdd on your observations that the manual dexterity test was not properly given to you?

A No.

Q Now is that the only time you have taken the manaal dexterity test?

A Yes.

Q Did the people at the State Employment office ever tell you when you could take the manual dexterity test again?

A No, they told me, said, um, you take it in two years time.

Q Said you can take it again in two years?

A Two years.

Q Did they tell you why you couldn't take it for two years?

A They didn't tell me.

Q Is it correct that your birthday is December 7th, 1934?

A That's right.

Q Did you ever take the Wonderlic test at the plant?

A No, I have not.

Q Were you ever at any time given any instructions about how to answer the questions on the Wonderlic test?

A No.

Q Have you ever seen a Wonderlic test form?

A No.

Q And what kind of questions they ask on a Wonderlic test?

A No, I don't.

Q Now how many years of schooling did you complete?

A I finished the high school.

Q You graduated from high school?

A Yes.

Q Did you ever flunk any grades or did you progress one grade at a time?

A I progressed one at a time.

Q So you never failed a grade?

A No, I didn't.

Q During your schooling did you take courses in arithmatic?

A Yes.

Q English?

A Yes.

Q Reading and writing?

A Yes.

Q During the time you were in school did you have to take written tests?

A Yes.

Q Were you given a certain amount of time to finish those tests?

A No.

Q You stayed as long as you wanted to?

A As long as I wanted to, until they get ready to take the paper.

Q Well, I mean there was some time limit on how long you could work on the tests?

A I don't know.

Q Have you ever been given any physical examination at the plant?

A No, I have not.

Q You don't know of any serious illness or injuries you ever had?

A No.

Q

Q Ever received any disability payments for any injuries?

A No.

Q Did you ever file or, strike that, did you ever file or sign any charge complaint that Campbell Soup Company had discriminated against you?

A Yes.

Q I would like to show you a document which has been marked for identification as defendants' exhibit number 10, and ask you to look that over.

Mr. Finney: We can stipulate that she signed it sometime in October, on the second page of this document.

Mr. Deakins: We will stipulate that.

Q (By Mr. Deakins) Mrs. McCoy, we have agreed that this is your signature on the second page of defendants' exhibit number 10. Do you recall when you signed that?

A No, but I think it sometime in October.

Q All right, do you recall that you were in a public meeting place when you signed it?

A Yes.

Q Were these papers lying on a table when you walked up and signed it?

A Yes.

Q Did you read the whole thing before you signed it?

A Yes, I think.

Mr. Finney: Just a minute, the understanding is that our objection goes to all questions pertaining to this document.

Mr. Deakins: Yes.

Q (By Mr. Deakins) When you were reading, before you signed, you said you read the document?

A Yes.

Q Do you remember reading the first page of defendants' exhibit number 10? Is that what you read?

A Yes.

Q Do you remember reading anything else?

A No.

Q Was there anything else to it besides those two pages which you have before you as defendants' exhibit nubber 10?

A No.

Q That is all there was to it?

A Yes.

Q May I see that a moment? Now Mrs. McCoy, at the time you signed your name to the second page of defendants' exhibit number 10, was there anything written below your name?

A No.

Q All right. Now at the time you signed it, either before or after, did anyone ask you to raise your hand and swear that what you were saying was true and correct?

A No.

Q Anything to that effect?

A No.

Q And, do you know a lawyer by the name of Dorothy V. Sampson?
A I don't know her but I seen her.
Q You would recognize her?
A Yes.
Q Was she at this meeting when you signed this thing?
A Yes, I think so.
Q Did you have any discussion with Miss Sampson?
A No.
Q Do you know who wrote out the first page of this defendants' exhibit number 10?
A No, I don't.
Q Did you have any discussion with anyone before you signed this charge?
A Yes.
Q Who did you talk with?
A E-EOIc, something --
Q Equal Employment Opportunity?
A Yes.
Q Before you signed it?
A Yes, I think.
Q Were the representatives of the EEOC present at this meeting?
A Yes, I know it was some Government men.
Q Now this is the meeting that you signed this charge?
A Yes.
Q There were some Government men there?

A Yes.

Q What did you tell the Government people at that time?

A I tell them that I feel I was discriminate because I didn't get a job.

Q Anything else?

A No.

Q You say anything about the South Carolina Employment Security Commission?

A No, I didn't.

Q Did you tell them the Commission delayed your referral to Campbell Soup Company or anybody else?

A No, I didn't.

Q The South Carolina Employment Security Commission did not delay your refemal to Campbel Soup Company, did they?

A They tell me to go to Campbell Soup.

Q There wasn't any delay in it, was there, they didn't delay it?

A No.

Q They certainly didn't refuse?

A No.

Q Now do you recall Mrs. McCoy, during that public meeting when you signed defendants' exhibit number 10 that anybody stood up and read this petition, do you remember that, Reverend James or Reverend Lewis or anybody else?

A No.

Q Did you make this trip to Washington with them after you all signed this charge?

A No, I didn't.

Q Before you signed this charge did anybody tell you that by signing this charge you were going to get a job at Campbell Soup Company?

A No.

Mr. Finney: Objection to the question.

Q (By Mr. Deakins) Do you know Mr. James Parham?

A Yes, I know him.

Q You belong to his church?

A Yes.

Q Did you have occasion to be counseled by Mr. Parham?

A No.

Q Never made complaints to him about not getting a job at Campbell?

A No.

Q How about Reverend James, you know him?

A Yes.

Q You ever go to him and complain about not getting a job at Campbell?

A No.

Q You know Reverend Lewis?

A Yes.

Q You ever gone to him and sought his advice or talked to him about not getting a job at Campbell Soup Company?

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A No, I haven't.

Q Nowother than this defendants' exhibit number 10, have you ever signed or filed anything complaining against Campbell Soup Company?

A No.

Mr.Deakins: Counsellor, can we stipulate that the persons who signed defendants' exhib8t number 10 were not sworn?

Mr. Finney: Well, according to this form you have here, apparently the Government will allow these things to be sworn by Government agents if they are there, and I would be afraid, I don't know what they mean by subscribe, and so forth. Perhaps we had better not.

Q (By Mr. Deakins) Now you got a complaint that Campbell Soup Company has discriminated against you, is that correct?

A Yes.

Q For not hiring you?

A Yes.

Q Now what do you base that complaint on?

A I base it on the test.

Q What test?

A The written test --

Q You mean the Wonderlic test?

A Yes.

Q Anything else?

A And, um, the education.

~~Q Anything else?~~

~~A And race.~~

Q Anything else?

A And the race.

Q Your race?

A Yes.

Q All right, now let's first talk for a minute about the Wonderlic test. What do you know about the Wonderlic test?

A Nothing.

Q You feel like it discriminates against you?

A Yes.

Q All right, any reason for saying that?

A Yes, I have reasons.

Q Why?

Q Because I think I wouldn't hardly pass it.

Q But you don't know anything about the test, do you?

A No, I don't.

Q You don't kno w what the questions are?

A No, I don't.

Q You know how long they give you to answer the questions?

A No.

Q You know how many you have to get right to pass?

A No.

Q Let's, the educational requirement, what do you understand the educational requirement to be at Campbell Soup Company?

A I understand it to be in the fist beginning, not to have no grade level, and after,they went up to eighth grade.

Q You feel that that discriminates against you?

A Yes.

Q But you had more than eight years of school, haven't you?

A Yes, I have more than eight years.

Q So you wouldn't be disqualified, would you?

A ~~I wouldn't, no~~ I wouldn't know.

Q How do you feel that the education requirement of the company discriminates against you?

A Because if I take that test I know I wouldn't pass it, I would have a genius education to pass it.

Q Have a what?

A I would have to have a real high genius education to pass it.

Q I am not talking about the test, we have been through that. You don't know anything about the test?

A No.

Q Ok, who told you you had to have a genius education to pass it?

A No one, that is my thinking.

Q All right, talking about the educational requirement now, why do you feel that you have been discriminated against because of the educational standard that they have out there?

A Because I would say that my education, when I was going to school wouldn't compare with the education that people get today.

Q Well you don't have any information that this, strike that please, is it your understanding that the educational requirement out there, is that you have an eighth grade education?

A Yes.

Q They don't say anything about where you got to get the education, do they?

A No.

Q They say you got to go through eight grades of school anywhere?

A Yes.

Q How does that discriminate against you?

A Because, I will say that education back in the older days, we didn't get as much as, like the white people get education, the colored didn't get it like that. The education would be below the whites.

Q But you got a high school education?

A Yes.

Q All right, now you mentioned, you think you have been discriminated against because of the Wonderlic test?

A Yes.

Q And because of the educational requirements?

A Yes.

Q And then you say you feel like you have been discriminated against because of your race?

A Yes.

Q How have you been discriminated against based on your race?

A Because I am colored.

Q What information do you have that causes you to believe you have been discriminated against because of your race?

A Because they hire more whites than colored.

Q You feel that they ought to hire fifty, fifty?

A Yes, I do.

Q Anything else? Any other way in which you feel you have been discriminated against?

A No.

Q You don't think, do you understand that Campbell Soup Company gives employees physical examinations before hiring?

A Yes.

Q Do you consider that would be discriminatory?

A No, I don't think so, that would be important, I think.

Q You don't have any information that the way they check references out there is discriminatory, do you?

A I wouldn't know.

Q You don't have any knowledge about how they do check references

A No, I don't.

Q Or that they even do?

A No, I don't.

Q Any other think that you feel would, er, state in support of your claim that you have been discriminated against?

A No, other than not having a job.

Q Well is it your view that because you didn't get a job, no matter what the circumstances were, that you have been discriminated against?

Mr. Finney: Objection to the question.

Mr. Deakins: I withdraw the question.

A Yes.

Mr. Deakins: I have withdrawn the question.

Q (By Mr. Deakins) You can't think of any other reason that you consider you have been discriminated against?

A No.

Q So you are basing your claim on the Wonderlic test, the educational requirement, and the fact that they hired more white people than negroes?

A Yes.

Mr. Finney: Objection, I don't think that is a true characterization of what the witness said. I think the testimony was the witness complained of the manual dexterity test.

Q (By Mr. Deakins) All right, am I mistating your testimony, in saying your complaint is based on these three reasons? Because they hired more white people than colored, because of the educational requirement, and because of the Wonderlic test?

A Yes.

Q These are the reasons you feel you have been discriminated against?

A Yes.

Q And no other reason?

Mr. Finney: Objection.

Q (By Mr. Deakins) And no other reasons?

A No.

Q Now you were given this manual dexterity test, as you have testified to?

A Yes.

Q But there was nothing that you feel about the manual dexterity test which discriminated again you?

Mr. Finney: Objection, the question calls for a conclusion of this witness, which she is not qualified to give, and also that it is repetitious.

Q (By Mr. Deakins) You took the manual dexterity test but there is nothing about the way it was given to you or anything else that causes you to believe that you were discriminated against in the giving of that test?

A No, I don't know.

Q When you took this manual dexterity test were there other negroes that took the test at the same time?

A Yes.

Mr. Deakins: No further questions.

EXAMINATION BY MR. FINNEY

Q Mrs. McCoy, Mr. Partin didn't ask you if you ever worked for a plant when you went into these interviews?

A No.

Q Nobody ever asked you that?

A No.

A No.

Q And when you saw on the application, which has been identified, the term "employment", you thought they meant long time jobs?

A Yes.

Q You were in New York temporarily?

A Yes.

Q And you quit because you were pregnant?

A Yes.

Q Did you ever see any advertising in the papers from Campbell Soup Company requesting employees, even after you had filed your application?

A Yes.

Q And they were still running adds for employees?

A Yes.

Q Seeking employees?

A Yes.

Q And asking people to come and apply?

A Yes.

Q And you had applied for a job?

A Yes.

Q And you kept going back?

A Yes.

Q Mrs. McCoy, have you ever had read to you and discussed with you a copy of the EEOC decision?

A Yes.

Q Of course you don't understand all of this decision, but it has been explained to you?

A Yes.

Q As it was read and explained to you, do you believe the facts in the decision are true?

A Yes.

Q And do you know that the EEOC is a Government agency?

A Yes.

Q As far as you know, er, it is not, has nothing to do with Campbell Soup Company?

A Yes.

Q And you know that the only relation you have ever had with them was when you filed a complaint?

A Yes.

Q Which you hoped would get to them?

A Yes.

Q In this decision, or when it was discussed with you, you remember that a discussion was had about the manual dexterity test?

A Yes.

Q And the fact that it was improperly graded?

A Yes.

Q You don't know anything about the, a GATBB-238, do you?

A No.

Q But from your discussions and hearing of this decision, you

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know that the Government said there was something wrong with the way that test was graded?

A Yes.

Mr. Finney: We would like to enter in the record here, it is already in our complaint, the EEOC decision in Williams vs. Campbell Soup, Section D on Manual Dexterity test.

Mr. Deakins: We will object.

Mr. Finney: We would ask to do the same with regard to reference checks.

Mr. Deakins: We object.

Mr. Finney: And the same with regard to physical examinations.

Mr. Deakins: We object.

Mr. Finney: The same with regard to application evaluation.

Mr. Deakins: We object.

Mr. Finney: In other words, we can get it all at one time, we propose to get into the record the entire EEOC decision.

Mr. Deakins: We object. We object to the whole thing.

Q (By Mr. Finney)Did you look around when you were taking the manual dexterity test or after you finished, at other people, to see how they were doing? Were they putting bolts on nuts?

A Yes.

Q Did you look like you had done about as much as the other people there in the room had done?

Mr. Deakins: We object to that.

A I, yes, I think I did just as good.

Q (By Mr. Finney) YOu don't know that, you are not a testing expert?

A No.

Q And you don't even know who gave you the test?

A That's right.

Q As far as you know it could have been somebody from Campbell Soup Company?

A That's right.

Q Then didn't tell you who it was?

A No.

Q You just don't know.

A No.

Q And you don't know what relationship or what kind of contract Campbell had with the Employment Commission, do you?

A No, I don't.

RE-EXAMINATION BY MR. DEAKINS

Q Did a man give you part of the manual dexterity test and a woman give you a part of it?

A No, it was a man give part and another man give me a part.

Q Now those two men that gave you that test at the State Employment office, have you ever seen thmm at Campbell Soup Company?

A No.

Q You say you saw some adds in the papers advertising for new employees at Campbell Soup Company. When was that?

A T at was, I can't recall the month.

Q Was it before the plant opened?

A Before and after.

Q Well when did you see them after the plant was opened?

A See what, the add in the paper?

Q Yes.

A I can't recall the month, I mean the time.

Q Was it shortly after the plant had opened?

A Yes, sometime during that time.

Q What paper was it in?

A It was in the Daily Item, I think.

Q All right, you remember what kind of jobs they were advertising as having vacancies?

A No.

Q Do you remebber that it stated that Campbell Soup Company was an equal opportunity employer?

A No, I don't.

Q You are not saying it didn't say that, are you?

A Well I wouldn't know.

Q You don't recall anything else about the adds?

A No, I don't.

Mr. Deakins: No further questions.

MRS. PARALLEE MCDOWELL

was duly sworn and testified as follows:

EXAMINATION BY MR. DEAKINS

Q State your name please?

A Parrallee McDowell.

Q Are you married?

A Yes.

Q What is your husband's name?

A Ivey McDowell.

Q Is he another plaintiff in this case?

A Yes.

Mr. Deakins: I ask the Reporter to marked this document as defendants' exhibit number 25 for identification.

(Document referred to is received as defendants' exhibit 25 for identification)

Mr. Finney: We will stipulate that the document offered as defendants' exhibit 25 is the application of Parallee McDowell, signed by her, and she filled in all the blanks that are filled in except those filled in with the dark blue ink, except the signature, the signature is hers and it is in dark blue ink too.

Mr. Deakins: We will so stipulate.

Q (By Mr. Deakins) rs. McDowell, I show you a document which has been marked for identification as defendants' exhibit number 25, and we have agreed that this is the application for employment that you filed with Campbell Soup Company. You notice that where it has the date, it is marked in, 4-15-66, which would be April 15th, 1966, is that the date you filed that application?

A Yes.

Q All right, now you notice in the upper lefthand corner the word "fair"is written in, that is not your writing?

A No.

Q And under that it says, passed MDT, that is not your writing either?

A No.

Q At the time you filed this application were you interviewed by anyone? Did you talk to anybody at Campbell Soup Company when you filed the application?

A No.

Q You didn't talk with Mr. Partin?

A No, I filled in one at the employment office first.

Q I am talking about when you went out to the plant and filed this application.

A No, I didn't talk to Mr. Partin.

Q Did you talk to anyone, one of the girls out there?

A Yes, I talked to a girl.

Q Now did she ~~xxkx~~ ask you certain questions about the application?

A No, she didn't.

Q Do you remember that this girl that you talked to at Campbell

Soup asked you if you had any relatives working for the company?

A No, I don't remember. I remember putting it on the application.

Q Well now, you see on the front side of the application, you ere asked under the personal category, what relatives do you have in our employ, and someone has written in black ink, none. Not that is not your writing is it?

A No.

Q It is a true statement, isn't it? You don't have any relatives working there?

A I didn't had none then, but I do now.

Q All right, at the time you filled out the application you did not have?

A No.

Q And I notice under the experience category, you list one company?

A Yes.

Q And someone under the category date employed, they put three months. Now that is not your writing either, is it?

A No.

Q Do you recall that when you talked to this lady at Campbell Soup Company, she asled you how long you had worked for this company that you listed?

A Yes.

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Q Did you tell her three months?

A Yes.

Q Do you know if she wrote something down?

A She must have, it is on here.

Q All right, so she asked you some questions about the application, didn't she?

A Yes, she did.

Q What else did you all talk about?

A Well she just told me that, um, they, um, they didn't had no ~~pp~~ opening right then,I would be hearing from them.

Q Now is this the first time you had talked with anyone at Campbell Soup, at the plant, when you filed this application?

A Yes.

Q And before that you had filed an application at the State Employment office?

A Yes.

Q Now when you filed that application down at the State Employment office, were you applying for a job anywhere?

A No, Campbell.

Q Did you ask the State Employment people to ~~ff~~ refer you out to Campbell Soup Company?

A No, I asked for application to fill out/to Campbell.

Q And you filled out one at the State Employment office?

A Yes.

Q Did they then send you out to Campbell Soup?

A No, I took the test.

Q The manual dexterity test?

A Yes.

Q After you took the manual dexterity test did they send you out there?

A Let me see now, after O took the manual test, yes, after I receive a card from them, they told me to take it to the plant.

Q So you went to the Campbell Soup Company, you were sent there by the State Employment agency?

A Yes.

Q Did you ask them to send you out there or did they just suggest that you go out there on their own?

Mr. Finney: Object to the question, the witness has testified what she asked for and what they gave her.

Mr. Deakins: I withdraw the question.

Q (By Mr. Deakins) Now did you take this manual dexterity test before you went out to Campbell Soup Company the first time?

A Yes.

Q All right, now when you took the manual dexterity test did you take it with a group of other pepple?

A Yes.

Q And this was working with those bolts and washers and putting the little pegs in the holes?

A Yes.

Q And you were given a certain amount of time to do all of this?

A Yes.

Q After you completed that manual dexterity test you received a card from the State Employment agency?

A Yes.

Q And this was their way of notifying you you had passed the manual dexterity test?

A That's right.

Q And then you delivered that card out to Campbell Soup Company?

A Yes.

Q Did you file your application at that time?

A No, I didn't file it then.

Q Had you already filed your application at the plant when you took the card out there?

A No, I file it after I took the card out there.

Q Well is that two different visits you made to the plant now?

A Yes.

Q You went out there and gave them the card?

A es, I give the lady the card and she told me, um, that that card wasindicating I had pass the manual dexterity test.

Q That was what the lady at Campbell Soup told you?

A Yes.

Q But you had not filed ap allication out there yet?

A No.

Q When did you file your application? Was this later?

A Yes.

Q Now you state in your answers to interrogatories that you signed, and your lawyer has filed in this case on your behalf, that you believe it was about the last of March, 1966, that you too the manual dexterity test. Is that approximately correct?

A Yes, I think so.

Q And you also state in your answers to interrogatories that the test was given by the South Carolina Employment Security Commission, is that correct?

A Yes.

Q And that you were told that you had passed.

A Yes.

Q Now Mrs. McDowell, going back to this application that you filed out at the plant, which is defendants' exhibit number 25, after you filed that application did you ever go back out to the plant to check on your application?

A Yes, I did.

Q When was that, how many times did you go back out there?

A Well I can't remember now, but I believe it was about six or seven times.

Q All right, who did you talk to when you went out there?

A I talk to the girl and to, um, when I didn't talk to the girl I talked to Mr. Partin.

Q How many times did you talk to Mr. Partin?

A About four times.

Q All right, when were those times?

A I can't remember exactly when.

Q Approximately when were they?

A I can't remember when it was.

Q Were they all in 1966?

A Yes.

Q Tell me what your discussions were with Mr. Partin.

A I told him I was looking for a job, that I was checking on my application, and they didn't never call me, and he said he didn't haveany opening then.

Q All right, what else?

A That's all.

Q Did you ever tell Mr. Partin you had passed the manual dexterity test?

A No, I guess the card show that I did.

Q You don't remember anything else in your discussions with Mr. Partin?

A No, after he would tell me that I would just leave.

Q Did he tell you to check back with him?

A No, he didn't.

Q Now you had some discussions with some of the ladies out there too, after you filed your application, is that right?

A Yes.

Q How many of those discussions did you have?

A Oh, about three.

Q Do you know the names of the ladies you talked to?

A No, I don't.

Q Did you talk to the same lady every time?

A I don't remember, I don't guess so.

Q Can you describe these ladies for me?

A No, I can't.

Q What were your discussions with these ladies?

A I was asking to speak to Mr. Partin.

Q What did they say?

A They would say he wasn't in or he was busy.

Q And then there were other times you went and asked to talk to Mr. Partin and he wasn't busy and you did talk to him?

Mr. Finney; I object to the form of the question.

Q (By Mr. Deakins) Well you talked to Mr. Partin about four times after you filed your application, didn't you?

A After?

Q Yes.

A Yes.

Q When you talked to Mr. Partin, would you first talk to one of the ladies and ask to speak with him?

A Yes.

Q And they would let you?

A Not every time.

Q Well they let you on four times?

A Yes.

Q And two or three times they told you he was busy?

A That's right.

Q Did you ever phone out to the plant?

A Yes.

Q Who did you talk to then?

A One of the ladies.

Q What did you ask them?

A I was asking to speak to Mr. Partin.

Q What did they say?

A Wasn't in or busy or gone out.

Q Did you ever talk to Mr. Partin on the phone?

A Once.

Q What did you say to him?

A Well I called there one day, I don't remember what day it was, and asked to speak to Mr. Partin and it was about quarter to twelve, and I asked when would I be called to take the Wonderlic and he said if I could be there by twelve o'clock I could take it then. And I told him that, um, he said I could take it at that time because he know I wouldn't have time to be out there in that length of time.

Q Did he say that?

A No, I said that.

Q Did you say that to Mr. Partin?

A Yes, he said, I called about quarter of twelve and he said if I could be there by twelve o'clock I could take the test, and I told him he knowed Iwouldn't be able to be out there in that length of time, and he just laughed, he said come in eight o'clock in the morning and take the test.

Q When was this?

A I don't remember the date. Sometime in November, I think.

Q Of 1966?

A Yes.

Q Other than the times you told us about did you have any other discussions with representatives of Campbell Soup Company?

A No.

Q At the time you took this manual dexterity test, did a man and a woman give you the test?

A Yes.

Q Have you ever seen those two, that man and that woman, at Campbell Soup Company?

A The man what give the test?

Q Yes.

A No.

Q Now you will notice on your application for employment, identified as defendants' exhibit number 25, you list one previous employment, is that correct?

A Yes.

Q Who was that with?

A Smith Cannint Factory.

Q And you worked out there about three months?

A Yes.
Q And then they went out of business?
A Yes.
Q Do they have any people that could be contacted for a reference, do you know?
A I don't know.
Q Do you have any information that would lead you to believe thatthey would give you a bad reference if Campbell Soup Company contacted them?
A No.
Q Do you have any information as to whether or not Campbell Soup Company has contacted this company about you?
A No.
Q You say in event of emergency, they should notify Ivey McDowell, Jr?
A Yes.
Q And that is your husband?
A That's right.
Q He wouldn't give you a bad reference, would he?
A No.
Q And then you list three character references, one of them is Mrs. Bessie Brown, who is she?
A Friend of mine.
Q Another one is Mrs. Luther Nelson?
A Yes.
Q Who is she?

A She is a friend of mine.

Q And another one is Mrs. Fannie - who?

A Pack.

Q Fannie Pack, is she a friend of yours too?

A Yes.

Q Do you have any information or anything, that causes you to believe that any one of these three friends of yours would give you a bad reference if contacted by Campbell Soup Company?

A No.

Q Do you have any information which leads you to believe that any of these three friends of yours have been contacted by Campbell Soup Company about you?

A No.

Q Do you have any information that Campbell Soup Company has checked any type of reference on you?

A No, I don't.

Q Now have you ever had any other job than the one for Smith Canning?

A No.

Q The only job you have ever had?

A Yes.

Q What were you doing out there?

A Peeling tomatoes.

Q Now when you got a job with Smith Canning Company, did you have to fill out an application?

A No.

Q Did you have to take any sort of test?

A No.

Q Physical examination?

A No.

Q You had no other experience in any sort of manufacturing establishment or plant?

A No.

Q Have you ever applied for a job at any other factory or plant besides Campbell Soup Company?

A Yes.

Q Where?

A At Pioneer Dress Shop, and I don't know the name of the other one.

Q At those two places did you have to fill out an application?

A Yes.

Q Were you ever offered at job at either of those companies?

A No.

Q Did you take any sort of test?

A No.

Q Do you have any relatives that work for Campbell Soup now?

A Yes.

Q Who is that?

A Rebeca Burgess, and Emily Burgess.

Q And what is their relationship to you?

A Sister in law.

Q The last name is Burgess?

A Mine?

Q No, theirs.

A Yes.

Q At they kinø to Ethel Mae Burgess?

A No.

Q Are they kin to Virginia Burgess?

A No, different family.

Q All right, then, and these two relatives of yours are negroes? They are in laws?

A Yes.

Q Do you have any friends that work out there?

A Yes.

Q How many?

A I have a lot of them.

Q Give me their names?

A Well let me see. Henry Sanders, Geraldine Sanders, and some more, I can't remember all of them names.

Q Are these friends of yours negroes?

A Yes.

Q Do you have any relatives that have applied for employment with the company besides your husband?

A What is that?

Q Do you have any relatives besides your husband who have applied for jobs at Campbell Soup?

A Yes.

Q Who?

A My mother and my sister.

Q What is your mother's name?

A Sallie Burgess.

Q One of the plaintiffs in this case?

A Yes.

Q All right, who else?

A That's all.

Q Have you ever been arrested?

A No.

Q Now I believe you said that when,you took this manual dexterity test with a group of other people

A Yes.

Q Were some of those other people negrees?

A Some of them.

Q Some of them white?

A Yes.

Q The test was given to all as a group?

A Yes.

Q Were you all given the same instructions at the same time?

A Yes.

Q Did you notice anything about the way the test was given that was differetnt from one person to another?

A No.

Q You do not claim that taking the manual dexterity test discriminated against you in any way, do you?

A Yes.

Q In what way?

A It just wasn't needed for a job at Campbell Soup.

Q Why do you say that?

A Well it just wasn't needed.

Q Why wasn't it needed?

A Well quite natural you be using your fingers anyway.

Q Wasn't this test geared to the use of your hands?

A Yes.

Q Don't you understand that a job at Campbell Soup Company would require the use of your hands?

A Yes.

Q Why do you claim the manual dexterity test would discriminate against you then?

A I just think it just wasn't needed.

Q It wasn't what?

A Needed.

Q Well because something is not needed, is that in your view, does that mean it is discriminatory?

A Yes.

Q Anything that is not needed is discriminatory?

Mr. Finney: Objection.

Q Is that what you are telling me?

A I just think the test wasn't needed, the manual dexterity test.

Q You are not saying it was discriminatory, are you, or are you, I am asking.

A No, I don't think it was needed.

Q Well do you think it, would you consider it to be discriminatory?

A Probably not.

Q Is your correct birthday September 29th, 1944?

A That's right.

Q Now Mrs. McDowell, are you saying that you took the Wonderlic test?

A Yes, sir.

Q You were called approximately when? Do you recall approximately when you took it?

A I don't know the exact date but I believe it was in November.

Q Of 1966?

A Yes.

Q And this was after you had talked to Mr. Partin and he told you to be out there the next morning?

A Yes.

Q Did you take the Wonderlic test with a group pf people?

A Two other girls.

Q Were they negro or white?

A Negro.

Q Both of them?

A Yes.

Q Did you all take the test together?

A Yes.

Q Who gave you the test?

A Mr. Partin and another lady, a kind of elderly lady.

Q What kind of instructions did they give you before you started the test?

A Well they talked to us, to answer as man questions as we could.

Q Did they tell you to read the written instructions on the first page?

A No.

Q Did they tell you to sign your name to the test?

A Yes, we signed them.

Q Did you sign your name to the test?

A Yes, Isigned my name.

Q Well didn't after you signed your name to the test, they tell you to read the first page and don't turn it overuntil we tell you?

Mr. Finney: Objection, the question is repetitious.

A No.

Q (By Mr. Deakins) Well what did they tell you ~~y~~ before you started the test?

Mr. Finney: Same objection.

A They told us to answer as many questions as we could.

Q Anything else?

A No.

Q Did they tell you when to start?

A They had a clock there but it wasn't working, Mr. Partin said it wasn't working.

Q Well did he tell you when to start?

A Yes, um, let me see now, ~~they~~ this lady came in and put the little clock there on the table, and she said when the time up, the bell would ring. And about, in a few minutes Mr. Partin back and he say the bell wasn't working and the time was up.

Q Do you remember any of the questions?

A No.

Q You don't remember any of them?

A No.

Q What happened after you got through taking the test?

A Mr. Partin take up the papers and went to his office and told us to go outside to the personnel desk and he must have check on them, and then he call us up one by one and he told me I didn't pass.

Q Did he have your test there with him?

A Yes.

Q Did he show you the test?

A No.

Q Do you notice that on the test there are check marks, X's, by the answers?

A Notice it then?

Q Pardon? When you were in Mr. Partin's office.

A No.

Q What else was said during this meeting with Mr. Partin?

A He said you called in and asked to take the test and I let you take it butI am sorry you just didn't pass it.

Q Anything else?

A And he said, I asked when I would be able to take it again and he said he would have to go through all the applications and get the ones that ~~hand~~ hadn't take it and then he would call me again.

Q Did he tell you what score you made on the test?

A I don't remember. I don't think he told me.

Q Did you make any complaints to Mr. Partin about the test?

A No, I didn't, he tell me I didn't pass it.

Q Did you dispute that?

A No, I didn't dispute it.

Q You don't remember any of the questions on the test?

Mr. Finney: Objection.

A No.

Q (By Mr. Deakins) I show you a document which has been marked for identification as defendants' exhibit number 7, and ask you if you can identify that document.

A You say this the test that I took?

Q I didn't say anything, I asked if you could identify the document.

A Yes, this the Wonderlic.

Q Is that the type of test you took?

Mr. Finney: We object, there are several forms of the Wonderlic test. We can stipulate, if the witness took the test, that would be one of the forms.

Mr. Deakins: No, I don't mean that, I am talking about the form of the test, not that this is the particular test.

Q (By Mr. Deakins) Is this the type of test you took?

A Yes.

Q Did the test ask questions, and left a little space like this form does, for you to fill in a number?

A Yes.

Q Have you ever been given any instructions by anyone, such as Reverend Lewis, Reverend Mames or anyone else, as to how to answer the questions on the Wonderlic test?

A No.

Q Have you ever taken the Wonderlic test on any other occasion?

A No.

Q How many years of schooling have you had?

A I completed the tenth.

Q Did you start the eleventh?

A No.

Q I notice on your application which has been marked for identification as defendants' exhibit number 25, don't you say there that you had an eleventh grade education?

Mr. Finney: We will stipulate that the application, the application speaks for itself, if it says the eleventh grade.

A I did not complete the eleventh.

Q (By Mr. Deakins) Well did you start the eleventh grade?

A No, I didn't.

Q Ok, so you completed ten years of school?

A Yes.

Q Where did you go to school?

A Stone Hill Elementary and Lincoln High.

Q Did you ever fail any grades or did you progress every year?

A Progressed every year.

Q Did you take courses in arithmatic?

A Yes.

Q English?

A Yes.

Q Reading, and writing?

A Yes.

Q During the time you went to school tid you take written tests?

A Yes.

Q In all these courses that I have mentioned?

A Yes.

Q Were you given only a certain time to complete those tests?

A Sometimes we was.

Q Did you ever have any occasion when you took a test that you could take all the time you wanted?

A No, because you had to turn out sometime.

Q Then your teacher always asked you to turn the papers in at a certain time?

A Yes, when we get ready to go, the bell sound or something like that.

Q Did you ever take any physical examination At Campbell Soup?

A No.

Q Do you know, did you ever have any serious illness or injuries?

A No.

Q Have you ever received any sort of disability payment for injuries?

A No.

Q I wuld like to show you a document which has been marked for identification as defendants' exhibit number 10.

Mr. Finney: It is stipulated that she signed the document.

Q (By Mr. Deakins) Mrs. McDowell, have you ever filed or signed any charge complaining of discrimination against you by Campbell Soup Company?

A Yes, I did.

Q You did?

A Ask the question again.

Q Did you ever sign or file any document complaining of discrimination by Campbell Soup Company.

A Yes.

Q What form was that document?

A A document, you mean a complaint?

Q Yes.

A Yes.

Q What did it look like? Was it a, did it look like defendants' exhibit number 21, which I am showing you?

A I don't remember how it looked.

Q Did it look like defendants' exhibit number 22?

A No, I don't remember now.

Q Where did you sign this?

A At a meeting.

Q Where was the meeting?

A I don't recall the place, we had so many meetings.

Q Was this here in Sumter?

A Yes.

Q Was it a public meeting of some kind?

A Yes, it was a public meeting.

Q You remember what it said?

A What the meeting said?

Q No, whatever it was that you signed, said.

A Yes, whatever I signed it was that I was, was my complaint that I was discriminate against by Campbell Soup.

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Q Who made it out?

A I don't remember.

Q What did you do with it, did you sign it?

A Yes, I signed it.

Q Did you swear to it?

A No.

Q What did you do with it after you signed it?

Mr. Finney: We object to that on the ground the document speaks for itself, the EEOC or ---

Mr. Deakiss: Well I am just not aware of the document.

Mr. Finney: Well, EEOC or Campbell Soup might have the original.

Mr. Deakins: We will state for the record, we have checked w ith Campbell Soup Company and EEOC and can't find it.

Q (By Mr. Deakins) What did you do with the document after you signed it?

A I leave it there.

Q Did you leave it on the table there?

A At the meeting?

Q You know what was done with the document?

A I guess it was send to Washington.

Q Do you know?

A Yes, it was.

Q How do you know?

A Because I know.

Q Did you send it to Washington?

A No.

Q Were you present when anyone else sent it to Washington?

A No, I wasn't.

Q Then you don't know whether it was send to Washington or not, do you?

Mr. Finney: Objection, the witness has answered the ' question, argumentative.

Q (By Mr. Deakins) Do you know whether it was send to Washington?

Mr. Finney: Objection, the witness has already stated what she knows.

A Yes.

Q (By Mr. Deakins) How do you know it was sent to Washington?

A Because they, because, um, I just don't know.

Q You just don't know what?

A I know it was sent to Washington.

Q How do you know that?

A Because they, sent back and said they find discrimination, to me.

Q They send back and said that there was discrimination?

A The EOC, or something.

Q You talking about the decision of the EEOC, that they came down with?

A Yes.

Q Have you seen a copy of that?

A I sent my complaint there.

Q Did you receive a copy of this decision that the Equal Employment Opportunity Commissiin issued?

A No.

Q So just because they issued a decision, did they mention your name in the decision?

A No.

Q Have you ever seen that decision?

A No, I have not.

Q Well just because, I am just trying to understand your testimony. Just because the Eqaal Employment Opportunity Commission issued a decision about Campbell Soup Coppany, to me doesn't mean that you filed some sort of charge.

A I was writing a complaint.

Q Well how do you know that your complaint was ever sent to the EEOC, is what I am driving at. You don't Know? You didn't mail it to Washington, did you?

A No.

Q Do you know who did, if anyone did?

A No, I don't know exactly.

Q Do you know what happened to that thing you signed, after you layed it there on the table?

A No.

Q Did you ever send a copy of what you signed to the people at Campbell Soup Company?

A No.

Q Were you ever interviewed by any Government representative?

A Yes.

Q When was that?

A Ask the question again?

Q Were you ever interviewed by any Government representative?

A They was at some of the meetings we had.

Q Did you ever talk to one of them?

A Not personally.

Q You never did tell one of these Government people what your complaints were?

A Probably, I don't remember.

Q Why do you say probably then, if you don't remember? Or didn't you talk to any of these Government representatives, about what your complaints were?

A Yes.

Q What did you tell them?

A I tell them I believe I was discriminated against by Campbell.

Q Anything else?

A No.

Q When was this?

A I don't remember the exact date.

Q Was that the same time you signed this written complaint, which was called your complaint?

A It might have been that time, I don't remember.

Q Do you know the name of this Government man you were talking to?

A No.

Q Did he show you his credentials?

A No.

Mr. Deakins: Mr. Finney, we have never seen this charge, you don't have a copy of it, do you?

Mr. Finney: Idon't have a copy, I will check and see if I can locate it. My information was as to her charge, it was like that of Mrs. Kingwood, she wrote it down and signed it, they typed it up and then it was sent in. That is all the information I have. That form is the form I had the understanding it was made in.

Mr. Deakins: Oh, not in the same letter?

Mr. Finney: Oh, no.

Q (By Mr. Deakins) Now did you ever make a trip to Washington to talk to the Government people about Campbell Coup Company?

A Yes, sir, I did.

Q Was that when the group went up there?

A Yes.

Q Was this back in October of 1966?

A Somewhere along there.

Q Who did you go up there with?

A A group of us went.

Q Did you all drive up in a car?

A Yes.

Q Who did you drive with?

A Who did I drive with?

Q What car were you in, who was in the car with you when you went up there?

A It was Miss Mickens and my mother and --

Q All right, how long were you up there?

A Two days.

Q Who did you talk with?

A The members of the EOB, I don't know, may different people we talkdd qith.

Q Did you do any of the talking?

A No, I didn't do nothing.

Q You just sat there and listened?

A Yes.

Q Who was doing the talking?

A Some of the others who went with us.

Q Who?

A Now I don't remember exactly who all was doing the talking, I know they was talking.

Q Who do you remember talking to?

A I don't know.

Q Was Reverend Lewis there?

A Yes, he was talking.

Q You heard him doing some talking?

A Yes.

Q Was James Parham there?

A Yes.

Q Did he do any talking?

A Yes.

Q Was Reverend James there?

A No.

Q Did you overhear Reverend Lewis tell any of these people that he was up there as official representative of Core?

Mr. Finney: I object to the question, hearsay and not relevant to the issues here and no proper foundation laid for the question.

Q (ByMr. Deakins) Well do you know, did you sign anything while you were in Washington?

A No, we didn't.

Q When you signed whatever this was that you signed, which you call a complaint, was that befre or after you made the trip to Washington?

A That was before.

Q How long before?

A I think it was about a month before.

Q Was this thing you signed typwriteen?

A Yes, it was.

Q You remember who it was addressed to?

A No.

Q And no one else signed it besides you?

A No, no one, as far as I can recall.

Q You remember who typed it up?

A No.

Q Were you present when it was typed?

A No.

Q Well was it brought to you already typed up?

A I writk down on a paper myself and it was typed after I left. I don't know.

Q And after it was typed it was given back to you?

A Yes, and I signed it.

Q Who gave it back to you to sign?

A I don't remember.

Q You have no idea?

A No.

Q What did you say in this paper, this complaint?

Mr. Finney: Objection, the question is repetitious, she has already stated what she said in the letter.

Q(By Mr. Deakins) What did you say in this letter, or complaint?

A That Ifeel I was discriminated against by Campbell Soup.

Q Did yo say why you felt that way?

A Why?

Q Yes.

A I don't remember.

Q Do you know of any way Mrs. McDowell, that you can get a copy of what you signed?

A No, I don't.

Q Now you claim you have been discriminatd against by Campell Sopp Company, aren't you?

A Yes, I am.

Q On what do you base that complaint?

A On the Wonderlic.

Q What else?

A And the, um, race.

Q Those two definite things now, the Wonderlic test and race?

A Yes.

Q You don't consider your race has anything to do with the Woncerlic test do you?

Mr. Finney: We object to the question in its form. I think it is obvious you ---

Mr. Deakins: Now Mr. Finney, don't instruct the witness.

Mr. Finney: We object to the form of the question.

Q (By Mr. Deakins) I will pass that question for the moment. What other complaints do you have?

A None.

Q So there are two things, that you claim have to do with discrimination, and that is the Wonderlic test and your race?

A Yes.

Q All right, what do you consider discriminatory about the Wonderlic test?

A Well I feel that wasn't necessary and it was nothing concerning boning chicken in it and I didn't had enough time.

Q Anything else?

A That's all.

Q That didn't have anything to do with your race?

A No.

Q You just didn't think it was necessary and you were not given enough time?

A I said I didn't think it was necessary, didn't had nothing concerning boning chickens, and I didn't have enough time on it.

Q But you don't claim it had anything to do with your race, the Woncerlic test?

A The Wonderlic?

Q Yes.

Mr. Finney: Object to the form of the question.

A No, I don't know.

Q (By Mr. Deakins) Is it your claim that the Wonderlic test is discriminatory for all people that took it?

A Only the negroes.

Q Only the negroes?

A Yes.

Q It doesn't discriminate against white people --

Mr. Finney: Objection, the question calls for a conclusion.

Q (By Mr. Deakins) What was your answer?

A I say don't look so, they were being hired there.

Q All right, now other than, your other reason is that you feel like you have been discriminated against because of your race?

A Yes.

Q Why do you feel that?

A Because more whites been hired than was colored.

Q And you consider that to be discriminatory?

A Yes, that's right.

Q And is it your claim that the only way the company can avoid discrimination is to hire fifty percent colored and fifty percent white?

Mr. Finney: objection, not pertinent to the issues involved here.

Q (By Mr. Deakins) You understand the question?

A Ask it again.

Q Is it your claim that the only way the Campbell Soup Company can prevent discrimination because of race is to hire fifty percent coloredand fifty percent white?

A That's right.

Q Anything else you base your claim that you have been discriminated against because of your race?

A No.

Q Just that they have not hired enough colored people?

A And the Wonderlic.

Q Any other reason that you think, why you feel you have been discriminated against?

A No.

Q You don't feel like the lack of physical examination is discrimination?

A No.

Q You don't consider it discriminatory against negroes to have to take the physical examination?

A No.

Q Ypu don't feel it is discriminatory against negroes to have to take the finger test?

Mr. Finney: Object to the question, already asked.

A Yes, I said I didn't think it was necessary.

Q (By Mr. Deakins) I am asking you what you base your discrimination on, not whether you think it was necessary. You said the Wonderlic test and because of your race, is that coreect?

A Yes.

Q All right, do you consider it discriminatory towards negroes to have to take the manual dexterity test?

A Yes.

Q Why?

A Because it wasn't necessary.

Q Any other reason why you feel it is discriminatory?

A No.

Q Any other thing that you consider as being discriminatory against negroes?

A You mean at Campbell Soup Company?

Q Yes.

A No, not as I can recall.

Q Are you aware of the fact that Campbell Soup Company has an education requirement of eight years of school before you can be employed?

A Yes.

Q You don't consider that discriminatory?

Mr. Finney: Objection, the question is irrelevant and immaterial.

Q (By Mr. Deakins) You don't consider that to be discriminatory?

Mr. Finney: Objection on the further ground that there has been no foundation layed, no showing why the eighth grade education was instituted or anything.

A I don't know whether it is or not.

Q (By Mr. Deakins) It is not a part of your claim of discrimination?

A No.

Mr. Deakins: No further questions.

EXAMINATION BY MR. FINNEY

Q Mrs. McDowell, if I understand you correctly you wrote your complaint yourself?

A That's right.

Q And somebody typed it up?

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A That's right.

Q And to the best of your knowledge that complaint was taken to Washington?

A Yes.

Q Your complaint was against Campbell Soup Company?

A Yes.

Q And it alleged discrimination?

A Yes.

Q As far as you can remember?

A Yes.

Q Now I want to ask you a hypothetical question. If the population of Sumter County is fifty percent negro and more than one-half of the unemployed and under employed people of Sumter County are negroes, and Campbell Soup, or any other plant, were to put in a Wonderlic test, which did not relate to the job, would you, ~~wsty~~ without any studies, and as a result of this a large number of negroes were denied employment, would you consider that discriminatory?

Mr. Deakins: Objection.

A Yes.

Q (By Mr. Finney) If Campbell Soup were to check references through the Sumter County Chamber of Commerce, which has no negro members, would you consider that to be discrimination?

A Yes.

Q If they were?

A If they ---

Mr. Deakins: I object.

A Yes.

Q (By Mr. Finney) If Campbell Soup Company were to add an eighth grade education requirement for employment after knowing that one-half or more than one-half of the negroes in Sumter County did not have an eighth grade education, and there was no relation between eighth grade education and the job Campbell Soup wanted done, would you consider that discrimination?

Mr. Deakins: Object.

A Yes..

Q If the South Carolina Employment service, at the request of Campbell Soup were to give the finger test and not properly grade that finder test, and as a result of this improper grading a large number of negroes were disqualified, [illegible] would you consider that discrimination?

Mr. Deakins: I object.

A Yes.

Mr. Finney: No further questions.

EXAMINATION BY MR. DEAKINS

Q Now Mrs. McDowell, you don't know whether or not this letter, or this complaint that you signed against Campbell Soup Company was ever taken to Washington, do you?

A I know they said it was taken there.

Q Pardon?

A Yes.

Q How do you know that?

A Because they had a lot of person, who hand them in, said --

Q Said what?

A Ask your question again.

Q Do you know whether or not the letter or charge of whatever it was that you signed, complaining against Campbell Soup Company, was ever taken to Washington.

A Yes.

Q How do you know that?

A Becasse, um, the man, head of the meeting said it was taken there.

Q Who, what is his name?

A When we write this letter up and, um, at the meeting, and had it signed, they said it was going to be taken there.

Q Well do you know whether or not it in fact was?

A No, I don't know.

Q Do you have any knowledge as to whether or not the Campbell Soup Company has ever checked references through the Sumter Chamber of Commerce?

A I don't know whatthey did.

Q You ~~¢~~ would claim that it was discriminati n against you and your race if they did check references through the Chamber of Commerce?

A Yes.

Q Why?

A I don't believe no negroes work for the Chamber of Commerce.

Q Is there any other reason why you think that would be discrimination, other than it is just not necessary?

Mr. Finney: Objection, the witness stated it was because she didn't think there were any negroes in the Chamber of Commerce.

Q (By Mr. Deakins) You think that would be a reason you thought it would be discriminatory, that there weren't any negroes in the Sumter Chamber of Commerce?

A Yes.

Q You think it is discriminatory for a company to check with a white person about a negro?

A Yes.

Q Why?

A Because they would lie.

Q They would lie?

A Yes.

Q What do you base that on?

A On my own knowledge.

Q Tell me what your knowledge is.

Mr. Finney: Objection to this line of questions, as to specific individuals with reference to testing the knowledge of this witness as to incidents or relationships which are not connected with this case in any manner. If there is a proper foundation layed that is shown to be connected we will reconsider the objection.

Mr. Deakins: I didn't start this now.

Q (By Mr. Deakins) You understand the question?

A Ask it again.

Q What knowledge do you have that white people lie abot negroes?

A Because ever since I was old e ough, that they, that all they was doing against negroes.

Q Given me an example.

Mr. Finney: My objection runs to this whole line of questions.

Q (By Mr. Deakins) Any examples you have, of a white person lying about a negro?

Mr. Finney: And we further object and interpose in behalf of this client the right to refuse to answer that question, because to accuse a person of lying would be to accuse a person of an offense, in which a civil action would lie, and therefore we think she should be advised of her right not to answer the question under the Fifth Amendment, because it would subject her to prosecution. And we would in fact instruct the witness not to answer anything as to specific individuals, which she thinks would lie, or knows would lie to other individuals.

Mr. Deakins: No further questions.

Mr. Finney: We would like to get a stipulation that the decision of the EEOC was discussed by her with her attorney. In other words I discussedthe decision from the EEOC with the charging parties and the plaintiffs.

Mr. Deakins: Allthough we have no knowledge of it, we will accept counsel's statement.

MRS. MARGARET ELIZABETH WRIGHT

was duly sworn and testified as follows:

EXAMINATION BY MR. DEAKINS

Q Would you state your name please?

A Margaret Elizabeth Wright.

Q Are you married?

A Yes.

Q What is your husband's name?

A James Wright.

Q Did you file an application for employment at Campbell Soup Company?

A Yes.

Mr. Deakins: I will ask the Reporter to mark this document as defendants' exhibit number 26 for identification.

(Document referred to is received as defendants' exhibit 26 for identification)

Mr. Finney: We will stipulate that this exhibit 26 is Mrs. Wright's application for employment at Campbell Soup Company, and signed by her, on or about May 18th, 1966.

Q (By Mr. Deakins) Mrs. Wright, is this the only application for employment you have filed with the company?

A Yes, sir, only one.

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Q At the time you filed this application, you filed it out at the plant?

A Yes, at the plant.

Q Did you talk with anyone at the time you filed it?

A Yes, sir, I did.

Q Who talked to you?

A Mr. Partin.

Q Did he talk to you about the application and ask you certain questions about it?

A Yes, sir, he did.

Q All right, didn't he ask you who should be contacted in case of emergency?

A No, he didn't ask me, who to contact, he asked me how old my oldest child and the youngest child, and then he asked me my husband's name.

Q And you told him your husband's name was James Wright?

A That's right.

Q And did you tell him the ages of your children ran from 11 months to 16 years?

A That's right, the oldest and the youngest.

Q Did he ask you anything about where you had worked previously?

A Yes, he did.

Q And did you tell him you had not worked anywhere?

A No, no more than farm work. He asked me did I work at a plant.

Q And you told him no?

A I did.

Q Did you notice that he was writing some things down on your application as he was talking to you?

A Yes, he was writing.

Q Now the things that appear in blue ink on the front of this application form are not your writing, arethey?

A No.

Q But your signature on the back is in blue ink, and that is yours?

A That's right.

Q In filling in this application form, Mrs. Wright, did you answer these questions truthfully to the best of your knowledge?

A Yes, sir, I did.

Q Was there anything else said between you and Mr. Partin at the time you filed your application?

A Yes.

Q What did he say?

A He told me that the plant will start operating in June, and he say, when, he said they will be starting off from $1.45 to $1.50 an hour, and he say when the plant start, when he need people to work he will send for me.

Q He said he would send for you?

A Yes.

Q Did he say what he would send for you for?

A He say when the plant start operating.

Q He said he would send for you?

A That's what he said, when they need people to work he would send for me.

Q Did he say anything else?

A I can't remember now, not at that time.

Q All right. Now had you been referred out to Campbell Soup Company by the State Employment agency?

A No, I never applied for work to the State Employment office for Campbell. I went direct to the plant when I filed my application.

Q Mr. Partin didn't say you had to file an application to the State employment office?

A No, he didn't.

Q And he didn't say anything about you had to be referred by them?

A No, he didn't mention anything about the State employment office here in Sumter.

Q Now after you filed your application did you ever go back out to the plant and check on it?

A Yes, I did.

Q When?

A I went last year in September.

Q Who did you talk to then?

A I talked to one of the ladies that work in the personnel office.

Q What did she say?

A Well when I went in, she spoke, and she asked can she help me, and I told her I fill out an application ever since in May and I didn't hear anything from it. Well she asked me did I ever had a test, and I told her no I didn't, because they never have sent for me.

Q Did she say what kind of test she was talking about?

A No, she didn't say what kind of test, and she said that they had already stop giving the test up there, up here at the State employment office, and when she get an opening, she would send for me to take one of their tests down there at the plant.

Q She didn't say what kind of test?

A No, she didn't say what kind.

Q So she told you you would be sent for to take the tst?

A That what she said, when she get an opening, she would send me a card.

Q All right, can you describe that lady for us?

A She was medium size, and looked to be about twenty or thirty.

Q What color hair did she have?

A I don't know.

Q Did she wear glasses?

A No, she didn't wear glasses.

Q Did you ever go back to the plant after that?

A Yes, I did~~n~~, I went back in December.

Q Who did you talk to them?

A I talked to the same girl what talked to me in September, and she asked me the same question, can she help me, and I told her I fill out an application, you know, ever since in May and I didn't hear anything from it. So she told me to have a seat and wait until my turn come to talk to Mr. Partin.

Q All right, did you?

A So my turn come, I went in and I talked to him.

Q And what was your discussion with Mr. Partin?

A Well when I went in I told him I had fill out an application in May and hadn't heard anything from it. So he said to me, he say I guess you know what I am going up against, those was his words to me, and he said that he had, was getting all the ones that took the finger test up at the State employment office first. And then he said, and, um, then he was going to set two tests up out at the plant, and that wouldn't be before the first of the year, and told me to keep in touch with him.

Q All right. At the time do you know whether or not he had your application there?

A At the time did I knowed whether he had my application?

Q When he was sitting there talking to you, do you know if he had your application?

A No, sir, he didn't had my application.

Q Did he say anything about your education?

A Not in December, no.

Q Now, did you go out there again?

A Yes, sir, I went back in January.

Q Who did you talk to then?

A Well first I talked to the same girl and she told me to wait and see Mr. Partin when my turn came, and I did.

Q All right, what was your discussion with Mr. Partin?

A I went in and I told him, you know,what he said, had told me in December about keeping in touch with him and I had put in my application ever since in May and hadn't heard from ~~M~~ it, and he asked me my name and my education and how old I was, and I told him.

Q What did you tell him?

A What did I told Mr. Partin?

Q Yes.

A I told him how old I was and what grade.

Q All right, how old did you tell him you were?

A I was thirty-six.

Q What grade, what education did you tell him you had?

A Seventh.

Q Seventh grade?

A That's right.

Q And what else did he ask you?

A My name.

Q And you told him, and what did he say?

A He said that the reason I had not heard from my application, because of grade.

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Q Because of the seventh grade?

A That's right.

Q Did he tell you it was a requirment that you had to have an eighth grade education to get a job out there?

A Yes, that is what he told me.

Q Mr. Partin, he knew what edudation you had, because you told him?

A Yes.

Q What else was said during this conversation?

A Well I told him the reason why I came out, and fill in the application in the first place, because we, before the plant start operating they had the add in the Sumter Daily Item newspaper, and didn't have no special grade requirement, and I told him if they had a seventh grade education I wouldn't even come out there, to file an application. I told him I had the grade on my application, and he said he must have overlook that.

Q What else?

A He told me, ~~yx~~ he says Margaret, I can't give everybody a jo , he says, because I already have around nine hundred or a thousand application on file, and he said I can't give everybody a job. And I told him I know he can't give everybody a job and I told him the reason why I fill out the application, because it didn't have any grade requirement when the add first come out when the plant first start operating.

Q Anything else?

A And so I thanked him and walked out.

Q After that did you ever go back out there?

A I went back in June, of this year, the 26th.

Q Who did you talk to then?

A Mr. Allen.

Q What was your conversation with Mr. Allen?

A Well when my turn come to go in and talk with him, I talk with him and told him, you know, I put in an application over a year ago and hadn't heard anything from it, and he told me that, he asked me my name, education and age, and I told him, and he said the grade was the reason why I didn't heard from my application, because at the time they wasn't taking seventh grade education, said the work require eighth grade. And he said maybe in the future the grade will be lowered, then I will be considered. But right then, you know, he could not hire me.

Q Anything else said?

A And so I told him the reason whyIcome out in the first place because when the add was in the paper it wasn't no special grade. So he say he was glad I come by and put in a application, because he said maybe in the future the grade will be lowered and then I will be considered. And he said he will, you know, get in touch with me .

Q Anything else?

A Well I thanked him and I walked out.

Q Did you ever go back again?

A I didn't go back any more.

Q Did you ever telephone out there?

A No.

Q In these two conversations you had with Mr. Partin and Mr. Allen, they told told you that there was an eighth education requirement?

A Yes.

Q And did they tell you, did they make any statements to you about what school you had to go to to get this eighth grade education?

A No, they didn't.

Q During any of these conveesations that you had with any of these representatives of Campbell Soup Compagy, did they ever make any reference to your race?

A No, they didn't.

Q Now I notice on your application, Mrs. Wright, that you list no previous employment.

A No.

Q And Mr. Partin asked you if you had ever worked in any type of plant and you told him no?

A That's right.

Q Is it correct that the only type of employment you ever had was working on a farm?

A That's the only one.

Q Is that your place that you worked on?

A No.

Q You worked on somebody else's place?

A Yes.

Q Did you tell Mr. Partin whose placed you worked on?

A No, I didn't.

Q And you listed in case of emerbency, notify your husband?

A Yes, that's right.

Q You have no reason to believe he would give you a bad reference?

A No.

Q And then under the question, give three character references, do not include relatives or former employers, and there are three places for names there on your application, is that right?

A That's right.

Q And you did not fill that in?

A No, I didn't.

Q Why not?

A Well I just feel like it wasn't necessary for that, to get a job out there. The way I feel about it, all a person need to know is how to do the work.

Q Do you have any information which leads you to believe that Campbell Soup Company has ever made any sort of reference check on you?

A No, I don't.

Q Have you ever applied for employment at any other plant or factory in this area?

A Yes, I did.

Q Where?

A ioneed Dress Shop and Charm House.

Q Did you file a written application at those places?

A Yes.

Q Were you ever offered a job there?

A No.

Q Were you ever given any sort of test by any of those places?

A No, sir, no test.

Q Never given a physical examination?

A No.

Q Have you ever been arrested?

A No, sir.

Q Do you have any relatives working for Campbell Soup?

A Yes, I do.

Q Who.

A You want the names?

Q Yes.

A Mose McCants is one and Henry Britton.

Q Who was the first one?

A Mose McCants.

Q Is that a Mister?

A That's right, both of them is men.

Q What is his relationship to you?

A Cousin.

Q Is he working out there now?

A Yes, he is working there now.

Q And who is the other one?

A Henry Britton.

Q And is he presently working out there?

A As far as I know he is.

Q What relation is he to you?

A Both of them is cousins.

Q And both are negroes?

A That's right.

Q Do you have any other friends that work at Campbell Soup Company?

A Not that I know of, I don't have any friends that I know of work out there.

Q Do you know any people that work out there besides your two cousins?

A Yes, it's other people I know.

Q Who?

A Um, Flossie Benjamin, Sarah Sanders.

Q Who else?

A I can't recall all the names, I can't remember them.

Q All right, those are two people that you know, that you just mentioned, are they negroes?

A Yes.

Q Now you have never taken the manual dexterity test?

A No.

Q Or the finger test?

A Never did.

Q Have you ever gone out to the State Employment office and asked for permission to take one?

A No, I never did.

Q Is your birthday September 22, 1930?

A That's right.

Q And that is the birthday you told Mr. Partin?

A Yes, that's right.

Q Have you ever taken the Wonderlic personnel test?

A No, I never did take any test.

Q You know anything about the Wonderlic test?

A I know nothing about it, never seen it. I don't know what it is.

Q You know how long Campbell Soup permits employees to take this test?

A No, I really don't know.

Q Have you ever received any instructions from anyone as to how to answer the questions?

A I never did.

Q Now it is true that you have only seven years of school?

A That's all.

Q Where did you go to school?

A Stone Hill.

Q Did you go there all seven years?

A No, not all seven years. The first I went was Chandler school.

Q So you went to two different schools, were those public schools?

A Yes.

Q Did you ever fail any grades and have to take them over again?

A No.

Q You progressed one grade each year?

A That's right.

Q During the time you were in school, did you take courses in arithmatic?

A Yes.

Q English?

A Yes.

Q Writing and reading?

A Yes.

Q Were you given written tests?

A No more than when we review for examination.

Q You took examinations, didn't you?

A Yes.

Q Weren't those written examinations?

A Yes, they was written.

Q During your schooling did you learn the meaning of words?

A Yes, some.

Q You don't remember all those words today, I don't suppose?

A No, I don't.

Q When you took these written tests in school, were you given a certain time in which to complete your answers?

A Well a treacher, she would take them up and check them, carry them home and check them probably over night, and bring them back the next day.

Q No, when you took them would she say, you have got thirty minutes to take this test, or a certain amount of time?

A Well it been so long, I don't remember now.

Q Have you ever taken a physical examination at Campbell Soup Company?

A Never have.

Q You know of any serios illness or injuries you have had?

A No.

Q Ever received any disability payments for injuries?

A No.

Q Have you ever signed or filed any sort of complaint against Campbell Soup Company?

A Yes, I did.

Q I would like to show you a document marked as defendants' exhibit number 10 for identification.

- Mr. Finney: We will stipulate her signature appears on the second page.

Q (By Mr. Deakins) All right. Now Mrs. Wright, I am showing you what has been marked as defendants' exhibit number 10 for identification, and we have agreed here that your signature appears on the second page of that document. At the time you signed the second page of this document, had you read what was on the document before you signed it?

A On this page?

Q No, your signature appears on the second page. That is your signature?

A Yes.

Q Now before you signed your name to the second page of this document did you read the whole document?

A I read some of it.

Q Did you read the first page, of defendants' exhibit number 10?

A I can't remember reading that.

Q What do you remember reading?

A But I know I did sign it.

Q Did you read it, what you were signing, before you signed it?

A I remember I read something but I can't remember now.

Q Well what you read, was it like what is on the first page of defendants' exhibit number 10?

A About discrimination, things, you mean?

Q The first page of defendants' exhibit number 10, does it look like what you read before you signed it?

A Yes.

Q Now at the time you signed on page number 2, was there anything written below your signature at the time you signed it?

A No, I don't think it was.

Q You know a lawyer by the name of Dorothy V. Sampson?

A I have seen her before.

Q Was she present when you signed this?

A Yes, she was.

Q Did you take any oath that what you were signing was true and correct, swear to it?

A No, I didn't

Q What did you do with it when you signed it?

A Well I leave it there, where I signed it at.

Q Did you give any instructions to anyone about what to do with it?

A No, I didn't.

Q Before you signed it did anyone explain to you what you were signing or what they were going to do with it?

A Yes, because some of the Government men been there, at the meeting.

Q All right, you remember his name?

A No, I don't remember his name. I remember it was a white one.

Q Did you have any discussion with the Government man yourself?

A Not personally myself, not at that time, not with them.

Q This was a public meeting where you signed this?

A Yes.

Q Did you have any discussion with anybody at that time, at that meeting, about what yourcomplaints were against Campbell Soup Company?

A Did I have discussion with anybody? I told them my complaint.

Q Who did you tell?

A Well it was different ones there, at the meeting.

Q You remember the names of any of them?

A I know Miss Sampson was there for one.

Q Did you tell Miss Sampson what your complaints were?

A Yes, I did told her.

Q Pardon?

A I told my complaint was --

Q Did you tell Miss Sampson your complaint?

A That I put in a application and never did heard from it.

Q Did you tell Miss Sampson that?

A No, I didn't tell her particularly.

Q Who did you tell that to?

A The way I feel like, I was treated wrong, I figured my, that I should have signed a complaint against Campbell.

Q Did you tell anybody what your complaint was?

A Yes, I did, I guess it was Miss Sampson at the time. I don't remember because it was so crowded.

Q All right, whoever it was that you told what your complaint was, did you mention anything about the State Employment Agency?

A What, down here in Sumter?

Q Yes.

A Downtown here in Sumter?

Q Understand my question now. When you were telling whoever this was about your complaint was at this public meeting, you told somebody what your complaint was, didn't you?

A Yes.

Q In telling them that, did you say anything about the State Employment Agency here in Sumter?

A No, I didn't.

Q Have you ever had any dealings with the State Employment Agency?

A I never filed have filed an application at the State Employment, for Campbell. I file my application at the plant.

Q Have you ever filed any kind of application with the State Employment agency?

A Not durkng that time, I didn't.

Q So at the time you signed defendants' exhibit number 10, you had no complaints against the Employment agency?

A No.

Q You just had a complaint Against Campbell Soup Company?

A That's right.

Q What did you tell this person your complaint was against

Campbell Soup Company?

A Well I fill out an application and they promised to send for me and I never did hear nothing from it.

Q Is that what you told them your complaint was?

A That's what I told the person.

Q All right, anything else?

A Well I just feel like I was discriminate against because of my race.

Q Did you tell this person why you feel you were discriminated against because of your race?

A Because I never was sent for.

Q Did you tell them anything else?

A The grade.

Q Did you tell them you felt discriminated against on that ground?

A That's right.

Q Anything else?

A And those tests.

Q What did you tell them about the tests?

A Well, the way I feel about the ---

Q I am asking you what you told this person, not the way you feel. You understand that?

A Yes.

Q Did you tell this person anything about the tests?

A Well not at that time I didn't.

Q All right, now aside from signing defendants' exhibit number 10, have you ever signed or filed any other complaint against Campbell Soup Company?

A No, just once.

Q That is the only one?

A Yes.

Q Did you make this trip to Washington with the group?

A No, I never have went there.

Q Now you are complaining that Campbell Soup Company has discriminated against you, is that right?

A Yes.

Q On what do you base that claim?

A Because of education, and the race, and the ~~xmx~~ tests.

Q What tests?

A I would say the Wonderlic test, the written test.

Q You feel like you have been discriminated against because that is a job requirement?

A Well Mr. Partin told me when I went back in January, he told me about the grade was too low, and he told me himself I would have to take the finger test, the written test and the doctor examination.

Q Physical examination?

A That's right.

Q So you feel that you have been discriminated against because that Wonderlic test is a job requirement?

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A That's right.

Q But you have never seen the Wonderlic test?

A No, sir.

Q You don't know anything about it?

A I don't know anything about the Wonderlic test neigher the finger test.

Q You don't claim the finger test discriminated against you, do you?

A Well I don't know whether it discriminated against me or not, because I never did have the opportunity to prove that I could have pased it or not, neither one of them. I don't know.

Q And you claim you have been discriminated against because of the [illegible] educational requirement?

A That's right.

Q Is it true that schools were available to you to go beyond the seventh grade if you could?

A The school was available? At what school?

Q There were schools available to you to go beyond the seventh grade, weren't there?

A I guess they was.

Q What are the circumstances of you not continuing your education?

Mr. Finney: Object to the question, irrelevant and immaterial.

A State it again?

Q (By Mr. Deakins) Why didn't you go beyond the seventh grade?

A Because after the death of my father I had to quite school to help my mother with the farm, because we was sharecropping, and we had to help to try to make a living.

Q So the reason you had to quit school after the seventh grade, you just had to go to work?

A That's right.

Q But if you had not had to go to work you could have stayed in school? The school was there available?

A Yes, the school was available.

Mr. Deakins: No further questions.

EXAMINATION BY MR. FINNEY

Q Mrs. Wright, in this first conversation you had with Mr. Partin, when he told you he would send for you, you didn't think he was sending for you to go swimming or something like that, did you?

A No, I didn't.

Mr. Deakins: I object to the question.

Q (By Mr. Finney) What impression did you gather from your conversation when he told you he was going to send for you?

Mr. Deakins: I object.

A For a job.

Q (By Mr. Finney) You filed your application in May?

A That's right.

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Q And at that time you wanted to go to work at Campbell?

A That's right.

Q Now from May of 1966 until today, have you ever been given the opportunity to take the manual dexterity test?

A Never did.

Q You don't know why, you don't know who caused your delay, do you, you don't know whether it was Campbell Soup or the Employment office, do you?

A No, I don't.

Q But you filed your application with Campbell?

A Yes, at the plant.

Q Did Mr. Partin or anybody else at Campbell Soup tell you you had to go to the Employment office to take the test?

A No, he didn't, no one hadn't told me.

Q And you understand that the only reason you have not been tested or given any opportunity to work at Campbell is because you do not have but a seventh grade education?

A That's right.

Mr Finney: We would like for the record to indicate that we would at this time normally go through the points of the decision, but we will refrain from doing that if counsel has no objection.

Mr. Deakins: You mean stipulate that you went over the EEOC decision with her?

Mr. Finney: Yes.

Mr. Deakins: Based on counsel's statement that he did so, I will stipulate.

Q (By Mr. Finney) When you went to Campbell in May of 1966, they didn't tell you anything about the seventh grade education, or eighth grade education?

A No.

Q And they didn't tell you until you went back to Campbell in February of 1967? Is that right?

A Yes.

Q That is when he told you the grade was too low?

A That's right.

Mr. Finney: Nothing further.

MRS. SALLIE BURGESS

was duly sworn and testified as follows:

EXAMINATION BY MR. DEAKINS)

Q Will you state your name please

A Sallie Burgess.

Q Are you married?

A Yes.

Mr. Deakins: I would like the Reporter to mark this document as defendants' exhibit number 27 for identification.

(Document referred to is received as defendants' exhibit 27 for identification)

Mr. Finney: We will stipulate that this is the application for employment filed by this plaintiff with Campbell Soup

Company on or about September 26, 1966, being unsigned.

Mr. Deakins: We will so stipulate.

Q (By Mr. Deakins) Now Mrs. Burgess, did you file this application for employment out at the plant?

A No, out at Tec Center.

Q At the Technical Center?

A Yes.

Q When you filed this application, you gave it to the Campbell Soup people, didn't you?

A Yes, sir.

Q Now before that, before you filed this application with them, had you had any communication with Campbell Soup Company people before that?

A No, I didn't.

Q Now after you filed the application, did you ever talk with Campbell Soup people again?

A You mean did I talk to them that same day?

Q No, after you filed this, youfiled ~~wh~~ this application with the Campbell Soup people at Tec?

A Yes.

Q After that time did you ever have any other discussion with the Campbell Soup people?

A Yes.

Q On how many occasions?

A Just a word or two.

Q All right, how many times?

A Two or three times, with the telephone, one time in person.

Q All right, let's talk about those two or three telephone calls first. When did you make those telephone calls, about when?

A Well that was after I had, um, fill out this application, and, rum, never did get no hearing from it.

Q Approximately, was it 1966?

A Yes, sir.

Q All of the telephone calls were?

A Yes.

Q Who did you talk to, do you know?

A To a girl

Q You don't know who she was?

A No.

Q Did you phone out there to Campbell Soup Company?

A Yes, sir.

Q And asked for the personnel department?

A That's right.

Q And you talked to a girl?

A That's right.

Q You know whether it was the same girl each time?

A No, I don't.

Q Tell me what your conversations were.

A Well I asked to speak to the manager first.

Q What did she say?

A She tell me, said, um, she sorry he was testing right then, and to call back later.

Q And did you call back later?

A And I called back.

Q Was this the second time you called?

A Yes, that would, tht been one day.

Q All right, who did you talk to the second time?

A A girl.

Q What did you say this time?

A I asked to speak to the manager and she said, um, she sorry he was out. Tell me to call back later, and I called back later.

Q All right.

A And she said he was just step out and gone across the hall.

Q All right.

A And tell me to call back later.

Q Did you?

A Yes.

Q Was this all the same day?

A The same day.

Q So you called back again that same day?

A That's right. And she say um, when I call back, I believe that was the third time I called, and she say, um, she was sorry, but he must be gone out some place.

Q This was the third time you called she said this?

A Yes, that's right.

Q Did you call back?

A AndI called back and she say she sorry he just step out, and

I said well I am going to catch him and so I called again.

Q The same day?

A The same day, and she said well he is not in now, and I said well if he is not in May I leave a message with you. She say yes. And I say, um, I filed an application, fill out a application, and um, I went down to the employment office --

Q State employment office?

A That's right. And take the test, the finger test, and I said um, I never get no hearing from it. And I say, um, would you ask him would he check with the employment office and see whether I passed the test or not. And she say I sure will, would you give your number, andI give her my phone number. And I say, would you call back and let me know. She say I sure will, I till tell him. And that was all that time.

Q All right, now the last time you talked to that woman you told her who you were, told her your name?

A Yes.

Q In the earlier telephone conversations you had with the lday, did you tell her who you were?

A Yes, sir, the first time I called I tell her my name. And the last time I called I tell her my name.

Q And the other times you didn't?

A No.

Q You never did ask Mr. Partin to phone you, did you?

A Yes.

A Yes.

Q When did you do that?

A I told you I tell her my telephone mumber and asked him to check with the employment office to see whether I passed the test or not and call me back and let me know.

Q Oh, that was the last time, the last conversation you had with the oady that day?

A That's right.

Q In any of your earlier conversations had you left your number and asked him to call?

A No.

Q Did you ever have any other discussions overthe telephone with anyone at Campbell Soup Company?

A Yes, one time later.

Q Who did you talk to then?

A I called and talked to a girl. Asked to let me speak to the manager, she say she was sorry he wasn't in.

Q Anything else?

A And ever time I call she say she was sorry.

Q How many times did you call?

A I phoned two times but, I mean two times but, you know, when I phoned the first time, well at leasttwo days, because the first time I called I called back several times that same day, trying to get in touch with him.

Q You called four times the first day?

A The first day.

Q And that is when you said you finally ended up by telling the tirl to have Mr. Partin check and see if you had passed the manual dexterity test?

A Yes.

Q You were just considering that day as one time?

A That's right, one time.

Q Although you talked four or five times. And then later you phoned back and talked to the lady again?

A Yes, next day.

Q And asked to talk to the manager?

A That's right.

Q A d she told you he wasn't in?

A That's right.

Q Did you leave your name, tell her who was calling?

A Yes, sir.

Q Did you ask that the call be returned?

A Not that time.

Q You ever call back?

A No, I ain't called no more.

Q All right, ~~xxx~~ so you called out there on two different days?

A That's right.

Q The first day you talked four or five times, the other time you just talked one time?

A That's right, as well as I can remember, four or five times.

Q Were there other days that you called?

A No, I didn't call no more.

Q Now you say you visited at the plant one time?

A That's right.

Q When was that?

A Well I don't know exactly the time.

Q Was it before or after or during these telephone conversations?

A That was before the telephone calls.

Q Before any of the telephone calls?

A Yes.

Q Who did you talk with when you visited the plant?

A Talked to the girl.

Q Can you describe her for me?

A No, I couldn't describe her, because I didn't see nothing but her head.

Q Can you describe her head for us?

A No, I couldn't.

Q What was your conversation with this girl?

A I asked could I come in and speak to the manager, and she say she was sorry that they was fixing to close up.

Q Anything else?

A That' all.

Q You didn't tell her why you wanted to talk to the manager?

A No, I tell her I wanted to speak to the manager, she didn't ask me why.

Q You didn't tell her why either?

A No, she just crack the door, I couldn't even see nothing but her head, and, when I went there and knock on the door, she crack the door and peep out.

Q Did you tell her who you were?

A No, she asked may I help you, and I said I wanted to speak to the manager, and she say I am sorry, we fixing to close and shut the door and that is all I had time to say.

Q Did she lock the door back?

A I don't know, I didn't put my hand on the knob.

Q Did you visit the plant on any other occasion?

A No, that was the first and last.

Q So you have never talked to Mr. Partin?

A No, never did hear from him.

Q Now at the time you filled out your application, who did you turn it in to?

A When I fill out the application, after I finish with it I took it back to the girl and she tell me, say take it, and tell me, say sit right down for a few minutes, the manager will be here after a while, he wants to talk to you, and I sit down and after a while a man came in and, um, she give him my blank, and um, he called me around there and I went, and he said have a seat Mrs. Burgess, and I did. And then he talked to me.

Q All right, now who was that?

A I don't know who it was.

Q Was it one of the two gentlemen in the room here?

A I couldn't say definite whether it was, but Know he was a kind of short built man.

Q Stand up Mr. Partin. Is that the man?

A I don't know whether that him or not.

Q What did this man look like, what color hair did he have?

A I didn't pay attention, I know he was a short built man.

Q Did he wear glassed?

A I don't know whether he did or not. Don't seem to me he did.

Q So at the time you filed your application you were interviewed by some man out there?

A Yes.

Q What was your conversation with that man at that time?

A Well um, he asked me, had I ever did any kind of work they was doing at Campbell Soup before, and, such as working poultry, and different things like that. I tell him yes, I have work before. And he say where at. And I say I worked with SumterFrozen Food Company a while. And he asked me, say what was your reason for leaving Sumter Frozen Food and I said well it was a good piece out and I didn't have transportation like I Ought to, I couldn't get to work and I quit.

Q What else was said?

A He um, he said, no, I went on to tell him about, I had work, I started to tell him rather, that I had work at Smith Canning Factory, and he say that is all right, Mrs. Burgess, say this is not the information, he say these the kind of persons we looking for, somebody who have had this kind of experience before. And he, um, give me a card, a little card, and he say you take this down to the employment office, the first of April, and they will give you a test, and I say Ok. And he say you can't forget it because that is April Fools day.

Q April first?

A Yes.

Q You didn't file your application until September.

A I filed my application, I mean, you say file the application until September? Oh, yes, I did.

Q Your application is dated 9-26-66.

A Well I filed my application sometime about the, the, um, somewhere along about the first of March.

Q How many applications have you filed out there?

A Just one.

Q Isn't defendants' exhibit number 27 the application you filed?

A Well I know I filed one about the, um, I don't remember, about the somewhere along the first of March.

Q That is the one you filed at Tec?

A That's right.

Q Did you ever file another application at this plant?

A No.

Q Well defendants' exhibit number 27 is the ~~applic~~ application you filled out, isn't it?

A Well I don't know, they must be got the wrong date on it or somebody put the wrong date on it or something.

Q Isn't that your writing, where the date is given?

A I don't know, unless I must be put the wrong date, but I know I did file the application along about the first of March.

Q Well where the date is, is your writing?

A Yes, look like my writing.

Q But your recollection is that you filed defendants' exhibit number 27 ----

A Along about the first of March.

Q March of 1966?

A That's right.

Q All right, and that is the only application you filed with Campbell Soup Company?

A That's the only application I filed with Campbell Soup.

Q All right. I notice your, on your application that you did not list any experience at all. You don't list any previous jobs that you held, is that correct? You left that area of the application blank?

A Well I must be just didn't fill it in because I really work at Sumter Frozen Food place.

Q Did you tell this man you talked to that you worked out there?

A I did.

Q Did you go to Hickory Grove School?

A No.

Q How many years education did you have?

A Six.

Q You havea friend named Jacob Wilson?

A No. I tell you, that must be another person, because, um ---

Q Theola Gamble?

A No.

Q Mary Floyd?

A No. That the wrong Burgess because um, the man that brought out, he tell me he had one for me, and he must be give it to the wrong Sallie Burgess. I sure had one for this address, he say. He say I must give it to the wrong Sallie Burgess.

Mr. Finney: You have never been subpoenaed?

A No. He said I put your ---

Mr. Deakins: I am sure the Sallie Burgess that was subpoenaed lives at Lake City some place.

A And he said um, I will put your, um, subpoena over next Lake City some place, and he say I will bring you another one and I ain't never seen no more.

Mr. Deakins: Well, the only thing I know to do --

Mr. Finney: Can he get the other application?

Mr. Deakins: Yes, we will just have to look. We will wait and take her tomorrow.

Mr. Finney: That will be all right.

The Witness is temporarily excused.

MR. SILAS WALKER

was duly sworn and testified as follows:

EXAMINATION BY MR. DEAKINS

Q Will you state your name please?

A Silas Walker, Jr.

Q Mr. Deakins: I ask the Reporter to mark this document as defendants' exhibit number 28 for identification.

(Document referred to is received as defendants' exhibit 28 for identification)

Q (By Mr. Deakins) Now Mr. Walker --

Mr. Finney: We will stipulate that defendants' exhibit number 28 is an application for employment with Campbell Soup Company submitted by Silas Walker, Jr., and signed by him.

Mr. Deakins: We will so stipulate. Can we also stipulate that the application was filed on or about September 12, 1966?

Mr. :Finney: Yes, sir, we will stipulate that.

Q (By Mr. Deakins) All right, now you will notice, Mr. Walker, on the application there is some, the word "poor" is up in the lefthand corner, that is not your writing, is it?

A No, sir.

Q Now at the time you filed this application did you go out to the plant and file it out there?

A Yes, sir.

Q Did you talk to anybody while you were out there?

A I didn't, I get the application from a lady.

Q Then you filled it out?

A Fill it out.

Q Who did you turn it in to?

A The same lady I got it from.

Q Did you talk to her at all?

A No, she just, asked me about the choice for a job, and she told me that there wasn't any opening at the present time, but they would let me know later.

Q Anything else that you recall?

A That's all.

Q Did you notice if she was writing on the application?

A I did.

Q You noticed she wrote something down?

A Yes.

Q On the application?

A Yes, when she was talking, and I passed it back to her.

Q I notice, is this the first time you had talked to anybody at Campbell Soup Company?

A Yes, sir.

Q All right, I noticke on your application that under the category of previous employment you have listed no previous employment?

A Yes, sir.

Q Is that true?

A That's right.

Q You never had a job?

A Sure, I have.

Øq Why didn't you list it?

A Well for some reason I didn't list it.

Q Pardon?

A For some other reason I did not list it as a previous employment.

Q For what reason?

A Well the previous job I had, and I was fired,on the cause that I had signed a, a, NACp request, and of course, then the man fired me and told me what he fired me for and for that reason, in that job I did not list where I worked. And I did work at Santee Print Works nine months. And if I put that on there and I go back, I been back there since to get a job and they refused to hire me, because I was a member of the NAACP. Asked me what organization I was a member.

Q Who asked you this now?

A One of the ones, er, who wrote the application, or take the application at Santee Print Works.

Q Oh, I see. You are nottalking about Campbell Soup Company.

A No.

Q Ok. You didn't tell anybody at Campbell Soup Company about having worked at this other place?

A No, I sure didn't.

Q All right, did you have any other jobs?

A Yes, sir.

Q Where was that?

A Pioneer Dress Shop.

Q Why didn't you list that on the application?

A Some of the same people, I know was there, and I didn't list it there.

Q Why wouldn't you list it?

A Well I wanted a job, and I didn't want to be turned down and I just wouldn't list it.

Q You were afraid you would get a bad recommendation?

A Maybe, because of what I was.

Q What do you mean,what you were?

A The organization.

Q Were you fired at that other company?

A Sure.

Q What was the reason given?

A Well, work wasn't satisfactory. I work nine months without anything but they never did , whenever they find my name on that petition, they fired me, that what they fired me for.

Q How many petitions did you sign?

A Two.

Q Did you sign one while you were with each company?

A No, I didn't sign anything with Campbell. the previous employment, for that reason I did not state where I worked.

Q Did, give me the names of these companies again?

A Santee Print Works and Pioneer Dress Shop.

Q All right, did you sign any petition while you were working at Santee Print Works?

A Yes, that the first one.

Q Had you signed any petition when you worked forPioneer Dress Shop?

A No, I didn't.

Q And they told you at Pioneer Dress Shop you had been discharged because your work wasn't satisfactory?

A At Santee Print Works, they told me.

Q Santee told you you had been discharged because the work was not satisfactory?

A My foreman I was working under.

Q At Santee?

A That's right.

Q Was did he say?

A The only thing he told me was he was authorized to give me _______________(?) checks, under certain conditions, but what conditions he didn't say. And I was questioned by the night foreman and that is what he told me.

Q What did he tell you?

A He told me that is the reason why I was fired.

Q For what?

A Because I signed that school petition.

Q Was this a school petition?

A Yes, sir.

Q Was this a school petition?

A That's right.

Q Oh, I see. Did anyone at Santee Print Works tell you you were being discharged because your work wasn't satisfactory?

A Well one of the foreman at the time did.

Q All right, now when were you discharged at Santee Print Works?

A That were way back in 1966.

Q Now you worked at Pioneer Dress Shop too?

A Yes.

Q And you were discharged from that job?

A No, that just a temporary job, they hired me on a temporary basis.

Q And did you sign a petition while you were there?

A No, I didn't.

Q Those people didn't even know you had signed a petition as far as you know, did they?

A Well I knowed some of the people that was working there.

Q Who were those? Were they supervisory personnel or workers?

A Well one of them at the time was a supervisor, which was a _______________(?) Truett.

Q Was he a negro?

A No, a white.

Q Why didn't you list your pre;vious employment at Pioneer Dress Shop, when you filed your application with Campbell Soup?

A Well I figured they would ask me my foreman, and in return he was going to know that, and I didn't want them to know it and I didn't tell them.

Q All right have you had any other jobs besides these two jobs?

A Yes, sir.

Q Where?

A Well in between Santee and Pioneer I worked at Timmonsville Tobacco Company?

Q What kind of company?

A Timmonsville Tobacco Company.

Q What was your reason for leaving there?

A Well that was a seasonal job.

Q Layed off?

A No, didn't lay off, just a seasonal job, six weeks of tobacco work, working curing tobacco.

Q Those people down there know you had signed a petition?

A I don't know.

Q When did you sign that petition, what year was it?

A 1955.

Q What year was it that you worked for Timmonsville Tobacco Company?

A 1961.

Q About six years later?

A Right.

Q Do you have any reason to believe that those people at

Timmonsville Tobacco Company knew you signed that petition?

A No, sir.

Q Why didn't you list your employment at Timmonsville Tobacco Company on your application?

A Just because I didn't think it was important, just a seasonal job and I didn't thought that was required, a short season job.

Q All right, where else did you work?

A Nowhere else in that length of time. I worked a little bit at Sumter Frozen Food Company, just part time, not straight job.

Q When was that?

A Last fall.

Q Was it before you filed you r application with Campbell Soup?

A No.

Q After?

A Yes, sir.

Q So when you filed your application with Campbell Soup Company you had worked for three different companies before that?

A That's right.

Q And you didn't list any of those companies on your application?

A I had work more than that, I went to New York.

Q Before you filed your application?

A Sure.

Q Where did you work up there?

A A road, Rose Construction Company.

Q What year was that?

A 1958.

Q Did those people up in New York know you had signed that petition?

A No, I don't reckon.

Q Why didn't you list that previous employment?

A Well that was away from home, I didn't think that would help me way up there.

Q Did you work anywhere else before you filed this petition, this application, with Campbell Soup?

A No other place.

Q Now you are aged forty-seven?

A That's right.

Q And at the time you filed this application at Campbell Soup Company, you were forty-seven?

A That's right.

Q And you didn't show any other employment before this?

A No.

Q When you talked to this lady and turned in your application, you didn't tell her you had worked anywhere else, did you?

A I didn't.

Q And you asked for a, where it says position desired, you said maintenance?

A Maintenance.

Q Did you discuss that type of job you wanted with that lady? At the time you filed your application?

A No, she didn't ask me and I didn't tell her.

Q I thought you said something about what was your second choice.

A Oh, not the choice, whether first shift or second or third shift.

Q You didn't have any discussion about the position you desired?

A No, I didn't.

Q Then on your application where it says shift preferred, you said third?

A Yes.

Q And she asked you what your second preference was?

A Yes.

Q And the pay expected, you put in that blank, you put top pay, is that right?

A That's right.

Q Did you have any discussion with the lady about what top pay was?

A No, I didn't/

Q You listed, in care of emergency notify Beatrice C. Walker. Who is she?

A My wife.

Q Do you have any reason to believe she would give you a bad recommendation?

A No.

Q She would like for you to work, wouldn't she?

A Yes.

Q Then you give three character references, one of them being Gardy Fincher?

A Yes.

Q Who is that?

A A white lady, a neighbor out there.

Q A neighbor of yours?

A Yes.

Q A white woman?

A Yes.

Q Do you have any reason to believe she would give you a bad recommendation?

A No, I don't.

Q You don't think she would lie about you, do you?

A No.

Q Another character reference is R. M. Gregg, who is that?

A A colored lady.

Q Is she a friend of yours?

A Yes, sir.

Q You have any reason to believe she would give you a bad recommendation?

A No.

Q And the third character referehce you list is - what?

A Heyward Rhodes.

Q All right, who is that?

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A A cousin.

Q You have any reason to believe that Mr. Rhodes would give you a bad recommendation?

A No.

Q Are you aware, or do you have any information which leads you to believe that Campbell Soup Company has checked your references in any way?

A I sure don't.

Q With anyone?

A No.

Q When you filled out this application form did you try to answer all questions truthfully to the best of your knowledge?

A I did.

Q Have you ever been arrested?

A No.

Q Have you ever received workmens compensation for any disability?

A No.

Q Every been in military service?

A No.

Q Now I believe you, before you filed this application you had not talked to anybody at Campbell Soup Company?

A No.

Q after you filed your application did you efer talk to anybody out there again?

A No.

Q Never went back out there to check your application?

A No, I did not. I been out there and asked about the application but when I went in and asked was there any position open and they said no, I asked the lady at the desk and she, when she told me no, I didn't ask anything else, I just walk out.

Q Did she know who you were?

A I told her who I was.

Q What did you say to her?

A I told them who I was and what I come out there for, to find out whether there was any opening for employment.

Q And she told you no?

A Yes.

Q How many times did you do that?

A I didn't do that but once.

Q When was that?

A Well that was about in December.

Q 1966?

A Yes.

Q No further discussions?

A No further.

Q At the time you filed your application and talked with this lady, at that time,did she mention anything about your race?

A No, she didn't.

Q At the time you went back out there and told her who you were and wanted to know if there was any job open and she told you no, did she make any reference to your race at that time?

A She didn't.

Q And you had no other discussion with anyone else at Campbell Soup Company?

A No.

Q You have never worked at a plant that is engaged in the processing of poultry?

A No.

Q You have mentioned three or four other jobs that you had. Were you doing maintenance work at any of those jobs?

A At Santee Print I did.

Q You did maintenance work?

A Yes, sir.

Q And what kind of work was it, can you be more specific about it? What were you doing?

A Mechanic helper. My real job was fork lift operator and it was vacation time for me and they substituted me for mechanic helper.

Q How long did you work as a meahanic's helper out there?

A Well, it was a month.

Q Any of these other jobs, did you work as a maintenance man?

A I did.

Q What other jobs?

A Er, Pioneer Dress Shop.

Q What kind of work were you doing there?

A Repairing shelves and putting, where they put the cloth and dress on, with steel frame.

Q Did you do any maintenance work at Timmonsville Tobacco Company?

A I did not.

Q On any of these other places which you have worked, did you ever fill out an application there?

A Santee Print Works and also ~~Rxx~~ Pioneer Dress Shop.

Q Did you have to take a physicl examination?

A No.

Q Any kind of tests?

A At Santee Print Works they required a physical but the other didn't.

Q Did you pass the physical at Santee Print Works?

A Yes, sir.

Q Did you have to take any written test at any one of these other companies?

A Santee Print Works.

Q What kind of test?

A Make out the application. No other except make out the application.

Q Now were you referred to Campbell Soup Company by the State

Employment agency when you went and filed your application?

A I wasn't.

Q You just went out there on your own?

A That's right.

Q Did anybody at Campbell Soup Company tell you you had to go by the Employment office and file an application?

A No.

Q Did they make any statement you had to be referred to, by the State Employment office before you could get a job?

A No, they didn't.

Q Have you taken this manual dexterity test?

A I didn't.

Q You did not?

A I did not.

Q Never taken one before?

A Never have.

Q You know what I am talking about when I say manual dexterity test, that finger test?

A That's right.

Q Never taken one?

A No.

Q What is the date of your birth? Were you born in 1918?

A 13th.

Q 1913?

A 13th of October, 1918.

Q All right, have you ever taken this Wonderlic test?

A I have not.

Q Ever been given any instructions about how to answer the instructions, questions, on the Wonderlic test?

A No.

Q Are you sure?

A That's right.

Q You know Reverend Lewis?

A Sure I do.

Q Did you ever talk to Reverend Lewis about the Wonderlic test?

A No, sir.

Q You know Reverend James?

A I don't.

Q All right. How many years of schooling have you had?

A I finished the eighth grade and promoted to the ninth.

Q But you didn't finish the ninth grade?

A I didn't.

Q Where did you go to public school?

A Malina (?) parochial schoo. It was a Presbyterian school.

Q Did you go to school anywhere else?

A I didn't.

Q You didn't go to night school at Goodwill Industries school?

A That same twenty weeks from October until March, twenty weeks.

Q I am sorry, I didn't understand you.

A From October 24th until March 15th of this same year.

Q Of this year?

A Yes, for twenty weeks.

Q So you went to this Goodwill Industrial school after you filed your application?

A That's right.

Q But you did complete the eighth grade in school?

A Yes, sir.

Q All right, now when you were going to school did you take couses in arithmatic?

A I did.

Q In english?

A I did.

Q In writing and reading, and spelling?

A Yes, I did.

Q Did you learn the meaning of words?

A Such as I could understand.

Q You wound't remember the meaning of a lot of those words now, would you?

A No, and a lot of them I does remember the meaning of.

Q Did you ever take a physical examination in support of your application out at Campbell Soup Company?

A I did not.

Q You ~~have~~ ever had any serious sickness or illness?

A No.

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Q Ever received any disability payments of any kind?

A No, sir.

Q I would like to show you a document which has been marked for identification as defendants' exhibit number 10, and ask you whether or not your signature appears on the second page of that document. Is that your signature?

A Yes.

Q On the second page of defendants' exhibit number 10?

A Yes, that's right.

Q Do you recall when you put your signature on that document?

A I don't.

Mr. Finney: We will stipulate sometime in October of 1966.

Q (By Mr. Deakins) Very well. But you put your signature on there dufing a public meeting here in Sumter, didn't you?

A I did.

Q Before you put your signature on the second page of defendants' exhibit number 10, did you read the document first?

A I was instructed.

Q Pardon?

A I did.

Q I will ask you to read the first page of defendants' exhibit number 10, just read it to yourself. Have you had a chance to read that?

A Yes, sir.

Q Is that what you read before you signed your name to defendants' exhibit number 10?

A The best of my knowledge I did.

Q Now before you signed your name to defendants' exhibit number 10, did you ever have any, were you interviewed by anyone about what your complaint was against Campbell Soup?

A What you mean, interviewed?

Q Did you talk to anybody about what your complaints were against Campbell Soup, before you signed that document?

A I did.

Q Who did you talk to?

A A lawyer.

Q All right, was it Dorothy V. Sampson?

A It probably may.

Q Do you see the person in the room now?

A I did.

Q Can you point that person out to us?

A I don't know.

Q If you see the person in the room you can point the person out, can't you? I mean, feel free, can you point the person out in this room that you talked to before you signed your name to defendants' exhibit number 10?

A I can.

Q Please do.

A That lady over there.

Mr. Finney: We will stipulate that that is Miss Sampson.

Q (By Mr. Deakins) Now at the time you talked with Miss Sampson, before you signed your name to that document, what complaints did you tell her you had against Campbell Soup Company.

A In what way?

Q In any way.

A In, what I mean, I, I want you to state your question again.

Q You say you talked to Miss Sampson before you signed your name to defendants' exhibit number 10. What I want to know is what did you tell her?

A I thought I was discriminated, against, opportunity of getting a job in Campbell Soup Company.

Q All right, fine. That is what I am looking for. Did you tell her why you thought you were discriminated against?

A I did.

Q All right, what did you tell her?

A Well I feel like, just like I givke you the illustration about the, er, didn't give no references, that I worked for, a nd I feel that giving that future reference would give somebody a chance to, either give me a good record or not, so therefore I didn't give it.

Q Did you tell all this to Miss Sampson when you were talking to her. Is this what you told her?

A No, I am telling you.

Q No, I don't want you to tell me anything, except that which you told Miss Sampton. You told Miss Sampson you felt like Campbell Soup Company had discriminated against you, is that right?

A That's right.

Q Did you tell Miss Sampson why you felt that way?

A Well according to the document I signed I did.

Q Yes, I know, but I am trying to find out what you told Miss Sampson. What did you tell her?

A In words, you are speaking of, you want me to tell you?

A Yes.

A Well I feel that --

Q Now is this what you told Miss Sampson?

A I am telling you now.

Q I don't want you to tell me anything except what you told Miss Sampson.

A I said I feel like I was discriminated.

Q Is that what you told her?

A That's what I said.

Q Did you tell her anything else?

A Well, I can't tell everything I said, because I don't remember.

Q All right, do you remember anything else?

A No, I don't.

Q All right, when you were talking with Miss Sampson about feeling like you had been discriminated against by Campbell

Soup Company, did you make any reference to the State Employment office?

A Well, I did.

Q What did you tell her abot that?

A Well, what I, what I tell her?

Q Yes.

A Well I didn't want to go to the State Employment office again because I feel they had my record from the other place and I didn't want to go and that is why I didn't went.

Q Did you tell Miss Sampson that?

A I did.

Q All right, so you never had been down to the State Employment office, about getting referred to Campbell Soup Company?

A I didn't.

Q Can you recall anything else you told Miss Sampson?

A Well I wanted some instructions, how to go about getting a job.

Q What did she tell you?

Mr. Finney: We object to any conversation between this witness and Miss Sampson, on the ground it would be hearsay, as far as this witness is concerned, and there was no party to this lawsuit present, other than, the defendant was not present.

Q (By Mr. Deakins) What did she say?

A What she told me?

Q Yes.

A Um, would you like for me to tell you what she said?

Q Yes, sir, I sure would. That is what I am asking you.

A Well, when someone come to you for advice, that what I am asking, you want me to tell you?

Q Well let me ask you this, at the time you talked with Miss Sampson, was she your attorney?

A It the present?

Q Yes, I mean, had you hired her as your lawyer at the time?

A No, I didn't.

Q Ok, so you were not in a situation where you were her client and she was your lawyer?

A No. Get me clear now. What you mean, at this particular time?

Q Yes.

A Well at the particular, place time she was.

Q She was ~~ask~~ acting as your attorney?

A Yes, sir.

Mr. Finney: We would move that any conversation between Miss Sampson and this plaintiff be stricken from the record, as being improper.

Q (By Mr. Deakins) All right, now, Mr. Walker, we won't go into your conversation with Miss Sampson any further at this time. But at the time you signed your name to the second page of defendants' exhibit number 10, was there anything other than the two pages that are now a part of defendants' exhibit number 10?

A I didn't understand you, get it clear please.

Q When you signed defendants' exhibit number 10, you read the first page, and then you signed it, the second page, is that right?

A Yes.

Q Were there any other sheets to it other than the two you see before you now?

A I can't remember.

Q At the time you signed your name to the second sheet of defendants' exhibit number 10, was there any writing below your name on that page? You see where you signed your name on the second page?

A I see it.

Q At the time you put your name on that page was there any writing below your name?

A Um, I would say no.

Q So at the time you signed your name to the second page of defendants' exhibit number 10, either before or after, were you sworn that what you were writing was true and correct?

A I wasn't.

Q No one asked you to raise your hand and solemnly swear that you were telling the truth, like the Reporter did this afternoon?

A You want me to do that now, you say?

Q No, at the time you signed your name to defendants' exhibit number 10, did anyone ask you to raise your hand and swear you were telling the truth, at that time, the time you signed that paper?

A I don't remember.

Q Now other than signing defendants' exhibit number 10, did you ever sign or file any other type of complaint against Campbell Soup Company, because of discrimination?

A I don't remember.

Q You don't remember?

A No.

Q Well then your present understanding is you have not filed any other type of complaint against Campbell Soup Company?

A I don't remember.

Q Now during this public meeting when you signed your name to defendants' exhibit number 10, did anyone at that meeting stand up and read aloud the first page?

A I don't remember.

Q Was Reverend Lewis present at that meeting?

A I don't know.

Q Was James Parham there?

A I don't know.

Q Now you have, you now complain, Mr. Walker, as I understand it, that Campbell Soup Company has discriminated against you, is that correct?

A To the best of my knowledge.

Q All right, what do you base that claim on, what information?

A Leaving the application - just like I told you a little bit ago7.

Q Pardon?

A Because of the directions of, of, er, now, of Campbell Soup Company.

Q Because of the directions?

A Yes, and the tests they used.

Q Let me understand if I can, what you are saying. Are you saying you were discriminated against because of the directors of Campbell Soup --

A The way it was used?

Q The way what?

A That I understand it.

Q The way what you understand.

A The way the test was given.

Q What test are you talking about, the Wonderlic test?

A ~~I~~ didn't have either one.

Q Well my question is what are you basing your claim of discrimination on. Are you basing it on the fact they used the test?

A I feel I didn't get an answer from my application, and I went the second time and didn't get an answer, so I feel it was something, because I didn't get an answer.

Q What do you feel the reason is?

A Well I didn't get any xxxxxxx action.

Q Why do you think the reason is you didn't get any action?

A Well that I don't know.

Q Do you know anything about the Wonderlic test that they are using at Campbell Soup Company?

A I don't.

Q Have you ever seen one of the tests?

A Never.

Q Do you know what the questions are?

A I don't.

Q Do you know how long Campbell Soup gives you to answer the questions?

A I don't.

Q You never took the manual dexterity test?

A I never have.

Q Do you know what is involved in taking that test?

A I don't.

Q Do you know how long they give you to take it?

A I don't.

Q Have you heard about the education requirements to get a job at Campbell Soup?

A Eighth grade.

Q At any school?

A I don't know, just eighth grade.

Q Just that eighth grade education?

A That's right.

Q You feel that is discriminatory?

A Well I believe according to the school it is discriminatory.

Q In other words if you went to a certain school it is discriminatory, and if you went to another it is not?

A That's right.

Q You know anything about the physical examination they give at Campbell Soup?

A I don't.

Q Do you have any relatives working at Campbell Soup Company?

A Relatives, you mean, what relation?

Q Pardon?

A When you say relatives, what you mean?

Q You ~~axm~~ know what relatives are, don't you?

A Well I want to get the understanding, what you mean.

A Brother, sister, father, daughter, son, cousin, mother, do you have any kind of relatives working at Campbell Soup?

A I do.

Q Who is that?

A My wife.

Q What is her name?

A Beatrice C. Walker.

Q ~~In fact~~ Is that the person you put on the application to contract ~~in~~ in the event of emergency?

A Yes.

Q Was she working out at Campbell Soup at the time you filed your application?

A No, she didn't.

Q When did she start working out there?

A 11th January, this year.

Q And is she still working out there?

A She is

Q You know what her job is?

A I don't.

Q Do you have any other relatives working out there now?

A I do.

Q Who?

A First cousin.

Q What is his name?

A Cooper.

Q Is he still working there?

A Yes.

Q How long has he been out there?

A I don't know, sometime about a year.

Q Any other relatives working out there?

A I don't know.

Q All right, do you have any, do you know of anybody else besides relatives that are working out there?

A Some friends.

Q All right, how many

A Oh, a couple of 'em.

Q Are they negroes?

A Both.

Q Both of them are negroes?

A No, both, one white, one colored.

Q Your wife is a negro, your cousin is a negro?

A Yes.

Q Have you had any other relatives that have applied for jobs at Campbell Soup Company?

A Yes.

Q Who?

A My son.

Q What is his name?

A Joseph Walker.

Q He is not working there now?

A No, he never did.

Q You know when he applied?

A I don't.

Q Do you have any other relatives that have applied for a job out there?

A I don't know.

Q You never went down to the State Employment office and asked for permission to take the manual dexterity test?

A I didn't.

Mr. Deakins: No further questions.

## EXAMINATION BY MR. FINNEY

Q Mr. Waler, you say you were afraid to put the names of these companies you worked for in Sumter, because you were afraid they would be used against you?

A Yes.

Q And the fact you signed the NAACP petition to desegregate the schools in Sumter, has that been used against you before?

A Yes, sir.

Mr. Deakins: I object to that.

Q By one of these companies?

A Yes, sir.

Q And you were told that by --- a foreman?

Mr. Deakins: Object to that.

Q (By Mr. Finney) You were told that by a foreman?

A Yes, sir.

Q And you, when you said top pay, you meant as much money as the company paid for whatever job you could get?

A Whatever they paid.

Q What do you mean when you say maintenance?

Mr. Deakins: Object.

Q (By Mr. Finney) Now Mr. Waler, didn't you go to night school in addition to going to Goodwill Industrial School?

A Yes, sir.

Q How many years did you go to night school?

A Three years.

Q That was after you finished the eighth grade at Malina?

A Yes, sir.

Q Was that before you made the application to Campbell, during that time or after?

A It was during that time and after that time.

Q You were in school during, at night, during this time that you made application?

A Yes, sir.

Q Have you discussed with me and had discussed with you the decision of the EEOC regarding Campbell Soup Company?

A Yes, sir.

~~Q~~ Mr. Finney: Can we get the same stipulation that this matter was discussed in its entirety between the attorney-client?

Mr. Deakins: We will be willing to stipulated that the decision of the EEOC was discussed by Mr. Walker and Mr. Finney, without having knowledge of the facts of the discussion.

Q (By Mr. Finney) And the facts stated in that decision, do you believe them?

Mr. Deakins: I object to that.

A Yes, sir.

Q Were you aware of the fact this EEOC is a Government agency?

A Yes, sir.

Mr. Finney: I have no further questions.

EXAMINATION BY MR. DEAKINS

Q Mr. Walker, now on your application for employment, which is defendants' exhibit number 28, the only school you show you attended was the school at Melina?

A Yes.

Q Did you tell the lady you talked with when you filed your application that you had attended any other school?

A I didn't.

Mr. Deakins: No further questions.

MRS. GUSSI LEE MICKEL

was duly sworn and testified as follows:

EXAMINATION BY MR. DEAKINS

Mr. Finney: We would like to state at this point for the record, we are now about to take the deposition of Mrs. Gussi Mickel. Mrs. Mickel is a plaintiff in the case entitled Gussi Mickel vs. Exide Battery Company and South Carolina Employment Security Commission, which according to our information is now pending somewhere between the Fourth Circuit and the Supreme Court. And because of this fact and because of the fact that there may be some duplication of testimony, we thought that it was necessary and proper to bring in Miss Dorothy V. Sampson, attorney of Sumter, South Carolina, who represents Mrs. Mickel, in the previously mentioned case, by appointment of the Honorable R. W. Hemphill, United States District Judge in the State of South Carolina. And we would instruct Mrs. Mickel, that in her testimony giving this deposition, to try to limit her testimony to such facts as relate to her chagges of discrimination as to Campbell Soup Cmmpany, and/or the South Carolina Employment Security Commission, after the date which the lawsuit in which she is involved was filed. In other words what we are trying to say is that unless it becomes absolutely necessary, not to go into anything that transpired before, after the lawsuit was filed.

Mr. Deakins: What is the date that the suit was filed?

Miss Sampson: Filed April 29th, 1966.

Mr. Finney: And further, that the testimony as to the South Carolina Employment Security Commission should be as far as possible directed towards her application with Campbell Soup Company, and nothing to do with the application for employment at Exide Battery.

Q (By Mr. Deakins) Will you state your name please?

A Gussi Lee Mickel.

Q Are you married?

A Yes, sir.

Mr. Deakins: I ask the Reporter to mark this document as defendants' exhibit number 29 for identification.

(Document referred to is received as defendants' exhibit 29 for identification)

Mr. Deakins: I ask the Reporter to mark this postcard as defendants' exhibit number 30 for identification.

(Postcard referred to is received as defendants' exhibit 30 for identification)

Mr. Finney: We will stipulate as to those, that this is a card Mrs. Mickel received to report to Campbell Soup March 29th, 1966, as defendants' exhibit number 30.

Mr. Deakins: We will so stipulate.

Mr. Finney: We will stipulate that defendants' exhibit number ~~20~~ 29 is an application for employment with Campbell Soup Company which Mrs. Mickel had filled out and signed, and the application is dated March 31, 1966.

Mr. Deakins: Is that the date it was filed?

Mr. Finney: Yes.

Mr. Deakins: We will so stipulate.

Q (By Mr. Deakins) Mrs. Mickel I will show you a document which has been marked as defendants' exhibit number 29, which we have agreed is the application for employment you filed with Campbell Soup Company. Is this the only application for employment you filed with Campbell Soup Company?

A I filed one at Campbell Soup plant.

Q And this is it, Exhibit 29?

A Yes, sir.

Q At the time you filed this application with Campbell Soup Company were you interviewed by anyone?

A No, I wasn't.

Q Who did you give the application to when you filled it out?

A A girl.

Q In the personnel office?

A That's right.

Q All right, did she ask you any questions?

A No.

Q I notice that on your application form, where it says shift ~~de~~ preferred, are written in the words night shift? Is that your writing?

A Yes.

Q Then over by the side of it in parenthesis is second?

A Yes.

Q Now that is not your writing, is it?

A No, that's not my writing.

Q All right, do you recall at the time that you turned in your application that the lady asked you what shift you wanted?

A No, she didn'task me.

Q Did she ask you if you had a second choice?

A No, she didn't.

Q Nothing was mentioned about a second shift?

A Nothing only I filled out the application.

Q You had no discussion?

A No, she said I probably would be called, that's all.

Q You will have to repeat that.

A She said I probably would be called and that's all she said.

Q Now before you filed your application at Campbell Soup ~~P~~

Company, hadn't you received this postcard which is defendants' exhibit number 30?

A Yes.

Q All right, now before you received this car, which is defendants' exhibit number 30, you had taken a manual dexterity test down at the State Employment office?

A Yes.

Q All right, now when you took that test at the State Employment office, did you take the test with a group of other people?

A Yes,

Q Was this the test that involved the bolts and putting the pegs in the holes, and so forth?

A Yes.

Q Were you all all taking the test there together?

A All together.

Q And were you given a certain time in which to complete the test?

A Yes.

Q When you completed the test did the people down at the State Employment office tell you if you passed you would receive a card?

A That's right.

Q And a few days later you received defendants' exhibit number 30?

A Well, no, I didn't. I went down there and asked if I pass the test, and later on they sent me the card, and when I received the card, to go out to Tec Edcuational Center, to be interviewed by Mr. Partin.

Q All right, so you actually, when you filed your application at Campbell Soup, which is defendants' exhibit number 29, you filed it at Tec?

A Yes.

Q Now at the time you filed it did you talked to Mr. Partin?

A Yes, I talked with him.

Q At the time you filed your application?

A No, not this application. After I received that card there.

Q I am becoming confused. Didn't you receive the card, which is defendants' exhibit number 30, before you filed your application, which is defendants' exhibit number 29?

A No. I filed the application first, and then I received the card later.

Q Had you taken the manual dexterity test before you filed the application?

A No.

Q After?

A After.

Q Well I don't want to confuse you, Mrs. Mickel, but you will notice on the card, it says , date to report, 3-29-66, which would be March 29th, 1966. Now your application is dated March 31st, 1966, which would be two days later.

A Well, I don't know, but I, um ---

Q Maybe we can clear this up, did you file an application down att the State office?

A Yes, sir.

Q And you left it at the State Employment office?

A Yes, sir, I left it there.

Q Now you filed that application before you took the manual dexterity test?

A Yes.

Q And before you received this postcard?

A Yes.

Q But this application I am showing you, which is defendants' exhibit number 29, you filed at E Tec, with the Campbell Soup people?

A Yes.

Q Now this application, that you filed with thecompany, was filed after you received this postcard?

A This application here?

Q Yes, this is the one you filed with the company.

A Yes, that the one I filed with the company.

Q And that was filed after you received the postcard from the State Employment office?

A Yes, that's right.

Q Now Mrs. Mickel, when you filled out this application with the company, which is defendants' exhibit number 29, did you attempt to answer all the questions truthfully to the best of your knowledge?

A Yes.

Q Now I notice in the, where it says on the application, list any physical defects or serious illnesses, someone has written in the word "none"?

A That's right.

Q Now that's not your writing, is it?

A No, that's not my writing.

Q Now at the time you turned in your application, did anyone ask you whether or not you had any physical prlblems or any illness of any kind?

A Probably the girl at the desk, yes.

Q And are you sure she didn't say anything about shift?

A No, she didn't say anything about shift.

Q Now on your application you said that in case of emergency notify Miss Christine Davis?

A Yes.

Q Who is she?

A My daughter.

Q Do you have any reason to believe she would give you a bad reference to Campbell Soup Company?

A No.

Q Is it correct that your daughter, Christine Davis, has worked for Campbell Soup in Sumter?

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A Yes, she has.

Q Now on your previous employment, on the application, you listed Automatic Laundry, is that correct?

A Yes.

Q And, is that Ellis Howard?

A Elsie Howard.

Q Those are the two previous jobs you listed on your application?

A Yes.

Q Do you have any reason to believe that either one of those companies or people would give you a ~~mkx~~ bad recommendation at Campbell Soup Company?

A Well I don't know about Auto, but I don't believe that Miss Howard would.

Q You think maybe Automatic Laundry would?

A Yes.

Q What causes you to believe that?

Mr. Finney: We object to this line of questions, as we did yesterday.

Q (By Mr. Deakins) What causes you to believe Automatic Laundry might?

A Well, I just believe that they would.

Q Any reason for that belief on your part?

A Well, I don't know, but just, to my knowledge, they would.

Q You just think they would?

A Yes, sir.

Q Do you have any knowledge that Campbell Soup Company has ever contacted the people at Automatic Laundry as a reference for you for a job?

A Well, I don't know.

Q To your knowledge have they?

A No, I don't know, I wouldn't say.

Q You don't know that they have?

A No.

Q Do you know whether or not Campbell Soup Company has ever contacted Elsie Howard for a reference for you?

A No, Idon't know.

Q I notice on your application you gave three character references. Who is the first one?

A That's Lillie Postell.

Q Who is she?

A She is a neighbor.

Q She is a neighbor and a friend?

A Yes.

Q Who is the second character reference you list?

A Mary Fedden.

Q Who is she?

A My sister in law.

Q And who is the third one you list?

A Dora Boon, a neighbor.

Q Do you have any reason to believe that anyone of these three persons wold give you a bad recommendation?

A No, I don't.

Q Do you have any knowledge that any one of the three has been contacted by Campbell Soup Company for a reference?

A Well, I don't know.

Q You don't know that they have?

A No.

Q Now Mrs. Mickel, aside from the two companies, or the two people you list as previous employers on this application, have you worked anywhere else besides these two places?

A No, Miss Howard was the last one I worked for.

Q And you worked for Automatic Laundry before then?

A Yes.

Q And you have not worked anywhere else?

A No.

Q You never have worked for any company engaged in the processing of poultry?

A Well, restuarants, cafes, hospital.

Q I am sorry.

A I worked at the hospital in the kitchen, and restuarants, fixing dinners.

Q Oh, so you have worked other than these two places you list?

A Yes, those the last two.

Q Did you work at those places after yo filed your application?

A No, that was long before.

Q But you didn't list those on your application?

A No.

Q Was there any reason?

A No, I didn't thought it was necessary.

Q All right, when you worked at the Automatic Laundry did you have to fill in a written application?

A No.

Q When you worked for Miss Elsie Howard, you didn't either?

A No, I didn't.

Q Now your, on your application, under the question, position desired, you said "boning"?

A Boning, that's right.

Q That's your writing?

A Yes.

Q Did you, the lady you turned your application in to, did you tell her any differently?

A No, I didn't.

Q You didn't state that you would be interested in any other job?

A No.

Q I believe on the application you also said pay expected, $55.00?

A Yes.

Q Did you give any explanation or discuss that with the lady you turned your application in to?

A No, I didn't.

Q Now Mrs. Mickel, at the time you went out to file your application with the company, had the South Carolina Employment Security Commission suggested that you go out there?

A No, they didn't.

Q Did you ask them to send you out there?

A I went up there and I asked them.

Q If they would send you to Campbell Soup Company?

A For an application.

Q To Campbell Soup?

A I didn't ask for Campbell Soup specially, when I first went there, I just asked for an application, and the lady told me that there was an application for Campbell Soup, and I went inside the desk and asked Mr. Baker for an application for Campbell Soup.

Q And then you were referred out to Campbell Soup Company by the State Employmentagency?

A No, they didn't refer me, I just willed out an application. They didn't refer me to go out there. I went out there on my own.

Q When you got out there, did you give them this postcard?

A No, the postcard there, I take that out to Tec, Technical Education Center, on Gaillard Drive.

Q That is where you filed your application?

A Yes.

Q I am not talking about the application you filed with the

State Employment agency. I am talking about this one you filed with the company, defendants' exhibit number 29.

A I filed the one with the company out to the plant, but at the Tec Center, when I received this card I went out there to be interviewed by Mr. Partin.

Q Well wasn't that just a couple of days after you received this postcard?

A Yes, sir.

Q Well this application which I am showing you is a couple of days after you received the postcard?

A Yes, that was fill out at the plant, Campbell Soup Company plant, and the Technical Education Center is different places.

Q I understand that. Have you filed two applications with representatives of Campbell Soup Company?

A Yes, one at the State Employment office and one at Campbell Soup plant.

Q Well the one I am showing you, which is defendants' exhibit number 29, is the one you filed at Tec with Mr. Partin, isn't it?

A Yes.

Q Well when did you file the other application?

A I file one at the State Employment office, and then I file one at the plant, but when I went out to Tec I didn't file no application, he just talked to me. It was a group of us went out there and he talked.

Q Where did you file defendants' exhibit number 29?

A At the plant.

Q Well before you filed this defendants' exhibit number 29 at the plant, did you talk to Mr. Partin before that?

A I talked to Mr. Partin, I think in March, and I filed that application there in, um ---

Q In March?

A March of 1966. The first application I filed, it was in 1965 with Campbell Soup.

Q You filed an applicatioin in 1965?

A 1965, right.

Q Was that at the State Employment office?

A Yes.

Q I am not interested in that one now, you left that one at the State Employment office?

A Yes, but, I don't understand, because this one here is ---

QNow Mrs. Mickel, so the record will be clear, you have only filed one application with the representatives of Campell Soup Company, is that correct?

A That's correct.

Q And that is defendants' exhibit number 29?

A That's right.

Q All right, now at the time you filed this application with Campbell Soup Company, you had already received the postcard from the State Employment agency?

A That's right.

Q Now at some earlier time you had filed another application atthe State Employment office?

A Yes.

Q And those are all the applications you filed?

A Yes, that was all.

Q You never later filed another application with Campbell Soup?

A I been out there --

Q I know, but you didn't file another application.

A Yes, I went out there along with another lady, and I filed another application, I don't know what become of it.

Q You took some tests. But you have only filed this one application with Campbell Soup Company?

A No, I filed another one.

Q When did you file the other one.

A I can't remember the date I filed it but I went out there, with another lady and I filed application because I give it to the girl.

Q Well did that application look just like defendants' exhibit number 29?

A No, it wasn --

Q Was it the same kind of form as defendants' exhibit number 29?

A I disremember now, but seems to me it was the same.

Q Who were you with when you filed it?

A My daughter and another lady.

Q Who was the other lady?

A Lucille Burgess.

Q Do you recall approximately when it was?

A I can't remember the date.

Q Was it in 1966?

A Yes, it was in 1966.

Q What part of the year was it?

A It was in April or May, it was.

Q April or May or 1966, which would have been one or two months after you filed defendants' exhibit number 29?

A That's right

Q Well who did you talk to when you filed that application?

A A girl.

Q What was your discussion with her?

A Well I just put in the application, and so, asked her did she know when we would be called in for an interview, and she said she didn't know.

Q Did you tell her you had already one application on file?

A No, I didn't.

Q Do you recall answering the questions on that second application any different from the way you answered on the first application?

A No.

Q Now besides your daughter, have you had any other relatives that worked for Campbell Soup Company?

A No.

Q Do you know any people that do work out there?

A I know a few.

Q How many?

A Well I can't count them.

Q Approximately how many?

A Well, quite a few.

Q How many is quite a few, ten?

A Well, more than that.

Q Twenty?

A Probably more than that.

Q You know thirty people that work out there?

A Thirty or more.

Q Are they all negroes?

A Yes.

Q Now besides filling the application at Campbell Soup Company, have you ever filed any applications at any other plants in this area?

A Yes, I have.

Q All right, what plants have you filed applications with?

A I filed application with Pioneer Dress Shop, and, that is about all.

Q Pardon?

A That's about all.

Q You filed one with Exide Battery?

A Well I didn't file one, I tried to, but --

Q You did, at Pioneer Dress Shop, did you actually file a written application?

A Yes.

Q Did you ever hear from it?

A No.

Q Did you ever go back and check on it?

A Yes.

Q You ever been offered a job out there?

A No.

Q Have you ever been given any physical examination by Pioneer Dress Shop?

A No.

Q Have you ever applied for a job at any other plant or factory in the area?

A No, I haven't.

Q Is your birthday August 29th, 1928?

A Yes.

Mr. Deakins: I will ask the Reporter to mark this document for identification as defendants' exhibit number 31. And also this document as defendants' exhibit number 32, for identification.

(Documents referred to are received as defendants' exhibits 31 and 32 for identification)

Q (By Mr. Deakins) Now Mrs. Mickel, after you filed your first application with Campbell Soup Company on March 31st, 1966, did you ever go out to the plant after that?

A Yes.

Q On how many occasions?

A Well I was out there about, I reckon four or five times.

Q All right, when was the first time? Was it before or after you filed the second application at Campbell?

A Well, that was, before.

Q Was it before you filed the second application?

A Yes.

Q So it was then, thirty to sixty days after you filed the first application, right?

A Yes, I went out there in the first of June, of 1966.

Q Is that the first time you had been out there since you filed your application?

A First time.

Q Did you go out there alone?

A No.

Q Who went with you?

A My daughter.

Q All right, is that when you filed your second application?

A I believe it was.

Q What happened while you were out there?

A Well I talked to the girl and I asked to see the manager, and she say he was out, and I asked did they have any jobs, or was hiring anybody, and she said no, they wasn't doing no hiring at all, we would just have to wait until we was called.

QWas that when you filed this other application, at that time?
A No, I didn't.
Q But you did file a second application?
A Yes, I did, but not that afternoon.
Q Had you filed your second application out there before this time?
A No, I didn't, not before. The next time I went out there I filed the application.
Q All right, then tell me about the second time you went out there.
A Well, the second time I went there ---
Q Did you go alone?
A Well I,and I filed the application, and I asked the girl to see the manager, and she say he was out, we just had to wait.
Q All right, did you wait?
A No, I left, I wait a while and I left.
Q All right, but you filed the second application?
A Yes, I did.
Q All right, did you ever go out there after that?
A Well the next time I was out Miss Sampson went with me.
Q All right, now at the ti,m you went out there with Miss Sampson, who did you talk with?
A Partin.
Q All right. Now did both you and Miss Sampson talk to Mr. Partin?

A Yes.

Q All right, what was the conversation?

A Well we talk to him about a job and hiring, and I was in need of work, because my husband was disabled and I had five children to support and get no help. And so he took me in the room and showed me a test.

Q Pardon?

A The test, showed me that test.

Q Well did you all ask for permission to take the test?

A No, I didn't.

Q Did you know you had to take a test?

A No, I know nothing about it, because when I received that card, and I was interviewed by Mr. Partin, that test, he told us that night it would be no more tests, that was all, if the doctor turn us down he had nothing to do with it, he say it wouldn't be no more test.

Q Now that was back in March, when you filed your first application?

A Yes.

Q All right, now Mr. Partin took you back to give you the test, is that right?

A Yes.

Q Was Miss Sampson there?

A She was there.

Q Did you all talk about the test? Did he explain to you what this test was?

A He explained.

Q Did he tell you you had to pass this test before you could be employed?

A That's right.

Q Did he ask you if you were ready to take the test at that time?

A That's right.

Q And did you tell him that you were ready at that time?

A Yes.

Q Did he ask Miss Sampson if she wanted you to take the test at that time?

A Well I don't remember whether asked her or not.

Q He just askekd you if you were ready?

A Yes.

Q He asked you if you were ready and you said you were?

A Yes.

Q I would like to show you a document which has been marked for identification as defendants' exhibit number 31. Is that the test you took out there that evening?

A Yes.

Q Now when you took the test did Mr. Partin tell you to write your name on the front of it, put the date?

A Yes, I believe he did.

Q Did you write your name and put the date on the front of it?

A Yes.

Q That's your signature on there, on the front page of defendants' exhibit number 31?

A Yes.

Q Did Mr. Partin then tell you to read the instructions on the front?

A I don't know whether he did or not.

Q Did you read them?

A I read them

Q All right. And Mr. Partin told you when to start the test?

A Um, Mr. Partin or a lady, one of them.

Q Were they both present when you were taking the test, Mr. Partin and a lady?

A They was present.

Q And one of them told you when to start the test?

A Yes.

Q Did they tell you that the buzzer would go off on the clock when the time was out?

A Yes.

Q And you worked on the test until the buzzer did go off?

A Yes.

Q And then you turned the test in to Mr. Partin?

A Yes.

Q Then did Mr. Partin meet with you and Miss Sampson thereafter, go over the test with you?

A You mean that same afternoon?

Q Yes.

A No.

Q Did he tell you you oassed the test?

A No, hedidn't.

Q Did he say anything?

A Well, we had to come back, he didn't tell me whether I passed it that evening or not.

Q Did he later tell you whether you had passed or not?

A Yes.

Q When was that?

A I believe it was the next day, I think.

Q Did you and Miss Sampson go back out there?

A I believe she called out there, I am not sure.

Q How did you, you didnpt pass that test?

A No, I did not.

Mr. Finney: Objection, the witness does not know whether she passed the test or not.

Mr. Deakins: That is what I am trying to find out.

Q (By Mr. Deakins) How did you find out you didn't pass the test.

A Well I went out to the place.

Q And Mr. Partin told you?

A Yes.

Q Was Miss Sampson with you at the time?

A Well, when I was inside the little private booth Miss Sampson was not in there. She was out, no one was in there but me and Mr. Partin giving me the test.

Q I understand, but after you gotthrough with the test.

A After I finished the test he take it, but he didn't tell me nothing about it.

Q Did Mr. Partin at sometime tell you you had not passed the test?

A Well, he tell, um, Miss Sampson.

Q Were you there when he told her?

A I wasn't there, but she called out there.

Q Miss Sampson later told you you had not passed the test?

A Yes.

Q Have you ever seen this test with all the check marks by the answers?

A You mean have I seen a test like this before?

Q No, have you see, this is your test, you said that?

A Yes, that is it.

Q You see all those checks and x's, the ~~checks~~ down the side by the answers, on the inside? See all those x's and checks in the blue ink?

A Yes.

Q All right, have you ever seen those before on this test form?

A No, I haven't.

Q All right.

And I never seen it any more.

Q You notice by the questions on the inside of the test. certain of the blanks are filled in in pencil with numbers, and so on, you see that?

A Yes, I see them.

Q That is your writing, isn't it?

A Yes.

Q And these are the answers you put on the test?

A Yes.

Q Now after you had been out there on that occasion, well, strike that. Before you took this test, at that time, Mr. Partin told you that you had to pass this test to get a job at Campbell Soup Company?

A No, sir, he didn't. I didn't know anything about that test ---

Q I am talking about once you got out there, and you and Miss Sampson started talking to Mr. Partin, and he told you to get a job out there you would have to pass this test?

A Oh yes.

Q Did he tell you what score you had to make?

A No, he didn't.

Q Didn't he tell you at the same time that you would also have to pass the physical?

A Yes.

Q All right, now after you and Miss Sampson had been out there on July 19th, 1966, and you took the test, did you go back out there again?

A Yes, I think we did. I am not sure.

Q I would like to show you a document which has been marked for identification as defendants' exhibit number 32, and ask you to look at that document. Now is this your signature on the front page of defendants' exhibit number32

A Yes.

Q And you signed your name on the front page and dated it, is that correct?

A Yes.

Q Now is this when you and Miss Sampson went back out to the plant?

A Yes.

Q That was on August 2, 1966?

A Yes.

Q And who did you talk to when you went there again, on that occasion?

A I think it was Mr. Partin.

Q And Miss Sampson was with you?

A Yes.

Q Anybody else with you all?

A No.

Q What was your discussion with Mr. Partin at thattime?

A Well I, um, naturally try to get a job because I needed work.

Q All right, what else?

A So me and him, no, Itook this one, I didn't heard from it until a few days later.

Q No, don't go beyond this, I am still in this conversation with Mr. Partin. When you and Miss Sampson talked to Mr. Partin on August 2nd, did you all ask for permissiin for you to take this Wonderlic test again?

A Yes.

Q And Mr. Partin granted you that permission?

A Yes.

Q Now did you tell Mr. Partin at that time that you, he had caught you cold the first time you took it, you were not prepared, and you wanted a second chance?

A I disremember whether I tell him that or not.

Q Wll do you recall giving him any reason why you wanted to take the test again?

A Yes.

Q What did you tell him?

A Because I needed work, I wanted work.

Q You didn't make any complaints about the first test you had been given?

A I didn't, I didn't know nothing about the test.

Q When you took it the first time?

A Yes.

Q Did you tell him this time that you were now ready to take the test again?

A No, I didn't tell him I was ready.

Q You asked for permission to take it?

A Yes.

Q And Mr. Partin gave you permission to take the test again?

A Yes.

Q And defendants' exhibit number 32 is the test that you filled out?

A That's right.

Q Now at that time was Miss Sampson present, while you were taking that test?

A No, she was present, but she wasn't inside the room.

Q Are you sure of that?

A Sure, tthe time I take the test, no, she wasn't.

Q Wasn't she present taking notes while you were taking the test?

A But she wasn't in there, I was at the table, she wasn't, while I was taking this test she wasn't.

Q Wasn't she in the same room?

A No.

Q All right, now who gave you the test the second time?

A Mr. Partin.

Q Was the girl present too?

A Yes, she was there.

Q Mr. Partin was giving you the instructions?

A Yes.

Q Did Mr. Partin tell you to read the front page of the test?

A Yes.

Q Did you read the front page?

A I read it.

Q All right ---

Mr. Deakins: Can we stipulate counsellor, that defendants' exhibits number 31 and 32 are the same for of the Wonderlic personnel test?

Mr. Finney: Yes, sir.

Q (By Mr. Deakins) All right. And then Mr. Partin told you that you would be given a certain amount of time to take this test, and when the time was up the buzzer would buzz on the clock?

A Yes.

Q And he told you could begin taking the test?

A Yes.

Q And you began taking the test and you worked on it until the buzzer went off?

A Yes.

Q And Mr. Partin took the test papers?

A Yes.

Q After you turned in the test paper did you talk with Mr. Partin about the test?

A No, I didn't.

Q Well did you ever talk to him about the test after that?

A I didn't talk to him about the test, Miss Sampson talked to him.

Q There at the plant, at that time?

A Yes.

Q And was it reported to you by Miss Sampson that you had failed the test again?

A Yes.

Q Now on this same occasion, August 2, 1966, did you and Miss Sampson also ask for permission for you to take a physical examination?

A Yes.

Q Did you in fact take a physical examination?

A Yes, I take the physical.

Q That same evening?

A Yes.

Mr. Deakins: I would like to have the Reporter to mark this document as defendants' exhibit number 33. And also to mark this document as defendants' exhibit number 34, for identification.

(Documents referred to are received as defendants' exhibits 33 and 34 for identification.)

Mr. Finney: We are willing to make the same stipulation as to exhibits 33 and 34, as were made in the exhibits in Mrs. Rhodes' case, that is this was a personal history signed by Mrs. Mickel, and --

Mr. Deakins: You are speaking of defendants' exhibit 33?

Mr. Finney: Exhibit 33, personal exhibit, I mean personal history.

Mr. Deakins: It is a form that Mrs. Mickel filled out herself and signed?

Mr. Finney: It appears that it is, yes. That she filled it out and signed her herself.

Mr. Deakins: Will you stipulate that that is the doctor's report and baeed on his examination these are the reasons for disqualifying her?

Mr. Finney: Yes, these are the reasons.

Mr. Deakins: And she signed it?

Mr. Finney: Yes.

Mr. Deakins: We propose to stipulate that defendants' eshibit number 33 is a personal health history which was made out by Mrs. Gussi Lee Mickel and signed by her. That she was given a physical examination by Dr. A. P. Bruner on the same evening of August 2nd, 1966, and that following the completion of the physical examination bythe doctor he filled out defendants' exhibit number 34, and listed on it the reasons for his finding that Mrs. Mickel was not physically qualified fxxmmm for employment by Campbell Soup Company. And signed, and he signed defendants' exhibit number 34, and Mrs. Gussi Lee Mickel signed defendants' exhibit number 34. Is that satisfactory?

Mr. Finney: Yes, that is satisfactory.

Q (By Mr. Deakins) Now Mrs. Mickel, after you completed your physical examination that evening, did you have any further discussion with Mr. Partin?

A Not that afternoon, but I was, I went back out to the plant.

Q When did you go back out there again?

A Well, one or two days later.

Q Who did you go out there with that time?

A My daughter.

Q Who did you talk to?

A I talked to Mr. Partin.

Q What was your discussion with Mr. Partin at that time?

A About work, and, er, I also asked him about working, he the doctor told me that I had to have my dental work done and I told him that I would.

Q Told who that?

A Mr. Partin, that I would work, along, and have my dental work done. And Mr. Partin told me, he said he do not hire because you need the work, he hire ~~any~~ only the qualified.

Q All right, anything else?

A And I keep talking to him because I needed work and telling him my situation about my husband, disabled, and I have five children, no one in the house working, and hejust said he sorry but I could go back to the laundromat, or for domestic work or something.

Q Anything else?

A And, um, he, I asked him, well let me work, and I say the first week or two I work I will start getting my dental work done, and I can't now when I am not working, and he refused, he say if I let you do it I will have a thousand more to let do that.

Q Anything else?

A No.

Q All right, now after that visit to the plant, did you ever go backk out there again?

A Well I went out there one time after that but I didn't see him.

Q When was that now?

A That was in, um, that was in September, and then I called out there.

Q Well now wait, in September, who did you talk to?

A A girl.

Q What was your discussion with her?

A I asked about seeing Mr. Partin and she told me he was out.

Q Anything else?

A No.

Q Then you, is that the last time you visited at the plant?

A That's the last time.

Q And you say you phoned out there?

A Yes.

Q How many times?

A 0 I phoned out there three or four times.

Q During what period of time?

A I phoned, you mwan whattime --

Q Well was it before you took these wonderlic tests or after?

A After.

Q And after you had taken the physical examination?

A Yes.

Q Who did you talk to on those occasions?

A Well I talked to a man on the phone, and I asked for Mr. Partin, and he says he can, I can't talk to him.

Q Did he say why?

A He told me, said, on the phone, I couldn't talk to him.

Q Did he say why you couldn't talk to him?

A No, and I said well this sound like him talking to me now on the phone.

Q I am sorry, I didn't understand you.

A I tell him, the man on the phone, I say this voice sound like Mr. Partin on the phone talking to me, and he told me no, it wasn't, I couldn't talk to him, and he hang up.

Q Did you ever phone again?

A Yes, I call out there again.

Q Who did you talk to?

A I talked to a man again, and I asked for the manager, and he told me, he says, you can't talk to the manager on the telephone, and I say why, well we just don't require that.

Q Said what?

A The company don't require that, you just can't talk to him on the phone.

Q All right, any other discussion on the telephone?

A No, he hang up and I didn't call any more.

Q So you called out there twice?

A Yes.

Q Now after you took this physical examination, at Campbell Soup Company, did you ever go to any other doctor and have another physical?

A Yes.

Q What doctor did you go to?

A Well, Dr. Harritt.

Q Did he give you a physical examination?

A Yes.

Q Were you sent out there by anybody?

A No, I just went to him for aphysical examination, to see what all that what the doctor said at Campbell Soup was wrong.

Q And you had a physical examination from this doctor?

A Yes.

Q Did he give you any written report of his findings?

A No, I didn't get it, from him, but he told me any time I need it I could get it.

Q All right, what did he say was wrong with you then?

A Well he didn't said nothing was wrong with me, only I just need the work.

Q Did he examine your eyes?

A Yes, he look in my eyes.

Q He examined your eyes?

A Yes.

Q Did he examine your ears?

A Well he didn't examine my ears, but he examine my eyes.

Q Did he weigh you?

A Yes, I weighed.

Q How much did you weigh?

A I weighed then around 170 or 180, somewhere along there.

Q All right, did you ever report what this other doctor had told you to anyone at Campbell Soup Company?

A No, I didn't.

Q A this other doctor that gave you this examination, did he s ay there was anything wrong with you, did he examine your teeth?

A Yes, he, well I knowed I had bad teeth, but what he said, it wasn't true.

Q I thought you said you knew you had bad teeth?

A Yes, but, what, he told me about my gum, he say if he touch my gum the stuff would jump out them like that, and I know it didn't do that.

Q Who said that?

A Dr. Bruner or something like that.

Q The one at Campbell Soup Company?

A Yes. He also told me I couldn't see with or without glasses, and I know that wasn't true, because I wouldn't be sitting here today.

Q But this doctor you later went to, did he say you had trouble with your teeth?

A Yes.

Q What else did he say about your teeth?

A He ~~xxx~~ didn't say anything, just said I needed to have them fixed.

Q I, did that doctor tell you you needed to lose weight too?

A Well he also said I needed to lose weight, but he said that had nothing to do with the work, because I worked about twelve years, doing shirts, six or seven hundred shirts a day, and it didn't bother me, and I know I could work at Campbell.

Q My question is did this other doctor tell you you needed to ~~xxx~~ lose weight.

A He told me I needed to lose weight, it would make my health bad later on.

Q Has anybody, such as Reverend Lewis, or anyone else, ever given you instructions as to how to answer the instructions or questions on the Wonderlic test?

A No.

Q Have you ever talked about the Wonderlic test with Referend Lewis?

A No, I have not.

Q Have you ever taken the Wonderlic test or any other type of test in support of any application with any other company besides Campbell Soup?

A No.

Q Now, how many years of schooling have you had?

A Well, I went to, up to the eleventh and went, well I went three years night school, twelve grades.

Q How many years were you in public school?

A Well I went in public school to the tenth.

Q Did you complete the tenth grade?

A I complete it and went some in the eleventh grade.

Q When you were in public school did you ever flunk a grade?

A Well quite naturally because um --

Q Well, I am just asking if you did, I am not asking why. Did you flunk some grades in the public school?

A Yes.

Q You had to take those grades over again?

A No, I just had to finish it on out the next year.

Q You were only in public school then a total of ten years?

A I was in there longer than that.

Q But you finished,the highest level you ever reached was completion of the tenth grade?

A Yes, in the public school.

Q Now in addition to the public school work you went to night school too?

A Yes.

Q How many years did you go to night school?

A Well I went, um, two years and a little better.

Q Now you notice on your application for employment you say that the highest grade completed was the tenth grade, is that correct?

A Yes, public school.

Q Now at the time you turned in this application did you tell the lady that you had gone to night school too?

A No, I didn't.

Q So as far as you are concerned she would have no way of knowing you went to night school?

A No, she didn't ask anything about night school.

Q On a later application you filed with Campbell Soup, did you again indicate a tenth grade education?

A No, you um, no you don't ~~xxx~~ have that one. No, that was the eleventh, because I made a year in night school.

Q Now when you were in public school, did you take corses in arithmatic?

A Yes, a little.

Q Does a little mean every year you had courses in arithmatic?

A Yes.

Q Did you have a course in english? Each year?

A Yes, a little.

Q Did you have courses in writing?

A A little.

Q Every year?

A Yes.

Q A course in reading every year?

A Yes.

Q Did you learn the meaning of words?

A Well, the little I was in school.

Q All right. You don't remember the meaning of all those words you learned today?

A No.

Q Now I would like to show you a document which has been marked for identification as defendants' exhibit number 10, and ask you if your name appears on the second page of that document. Is that your signature appearing on page two of defendants' exhibit number 10?

A Yes, that's my signature.

Q All right. Now before you signed your name to the second page of defendants exhibit number 10, did you read the first page?

A Yes.

Q Now at the time you signed your name to page two of that exhibit, were those the only two pages that were together?

Mr. Finney: We object to the form of the ---

A I disremember.

Q (By Mr. Deakins) You read the first page of defendants' exhibit number 10 and then you signed the second page, is that right?

A Yes.

Q You remember there being any other pages to it?

A I don't remember.

Q At the time you signed your name to the second page of defendants' exhibit number 10, was there any writing below your name, at the tim ou signed it?

A I disremember, but I think it was.

Q There was some writing below your name when you signed it?

A I think, I am not sure.

Q All right. At the time you signed this exhibit you were in a public meeting were you not?

A Yes.

Q Miss Sampson was there?

A Yes, she was there.

Q Before you signed ir, or even after you signed it, did anyone ask you to raise your hand and swear that what you were signing was true and correct?

A No.

Q Did you swear to the statement at all?

A No.

Q Now did anyone ask you if you wanted to sign this document?

A No.

Q Did anyone explain to you what you were signing?

A Well I understand what I was signing.

Q Who explained it to you?

A Well, um, well I knowed what I was signing, when it was explained, and I signed it.

Q Well you read it?

A Yes.

Q Now during this public meeting when you signed this document did anyone stand up and read the first page of defendants' exhibit number 10 out loud?

A I disremember if it was, um, I disremember.

Q And did you sign this document on approximately October 4, 1966?

A Yes.

Q Now after you had filed this document, did you ever file any other charges or complaints against Campbell Soup Company?

A No. You mean any other complaint? Oh, yes.

Q You did?

Q Yes.

Q How many other complaints did you file?

A Just one.

Mr. Deakins: I would like to have the Reporter marked this document as defendants' exhibit number 35 for identification.

(Document referred to is received as defendants' exhibit 35 for identification)

Q Mrs. Mickel, after you signed this exhibit number 10, did you make this trip to Washington with the others?

A Yes, I did.

Q Who did you go with up there?

A Reverend Lewis and Miss Burgess and Mr. Parham.

Q And who did you all meet with up there?

A Well, I disremember the names of all of them now.

Q Did you do any talking in those meetings yourself?

A Yes.

Q What did you tell them?

A Well I tell them about how I was discriminate against.

Q By Campbell Soup?

A Yes.

Q How did you tell them you were discriminated against by Campbell Soup Company?

A I tell them about that Wonderlic test and that grade leve.

Q The eighth grade level?

A Yes.

Q All right, what else did you tell them?

A And that was, and our race, because there was so many white people hired and none colored.

Q And what?

A No colored, very few colored people was there during that time.

Q You didn't tell them there weren't any colored people there?

A No, I didn't tell them it wasn't any, but it was so little..

Q But you know at least thirty colored people working out there yourself?

A Yes, but during that time they wasn't there.

Q I would like to show you a document marked for identification as defendants' exhibit number 35, and ask you whether or not your signature appears at the bottom of that document.

A Yes.

Q Now is this the other charge that you filed with the Equal Employment Opportunity Commission

A This one here?

Q Yes.

A That's right.

Q Now did you file that charge on approximately October 31st, 1966?

A Yes.

Mr. Deakins: Can we stipulate that this charge is not a part of the, is not included in the cases on which the EEOC rendered its decision on December 5th? They list the cases.

Mr. Finney: We can check it, but I will agree to it subject to that.

Mr. Deakins: We have a case number on it.Can we stipulate that case AC71-42?

Mr. Finney: We will stipulate that.

Q (By Mr. Deakins) Now when you filed defendants' exhibit number 35, did you explain to the Government representative what you knew about what had happened to you at Campbell Soup Company?

A Yes.

Q And then did he type up this charge and you signed it?

A No.

Q Who typed the charge up?

A I don't know who typed it up.

Q Did you read the charge after it had been typed and then signed it?

A Yes, I read it.

Q All right, are the statements contained in this charge true to the best of your knowledge?

A Yes, sir.

Q All right. I notice that one statement in this is that in August, 1966, I took a physical but did not pass. Is that true?

A Was what?

Q Is that true?

A Read that again.

Q You say in this charge, and I quote, in August, 1966, I took a physical but did not pass. Is that twue?

A Yes.

Mr. Finney: Counsellor, right there, I think that the stipplation covering this examination and the answer to that question would be predicated upon the fact of the doctor's statement that she did not pass, rather than the, her knowledge that she did not pass. We object to the form of the question otherwise.

Q (By Mr. Deakins) All right, and then you also stated in this charge, my daughter is suffering along with me. For everywhere she goes to look for a job and her address is known, that is the end. She is told that no jobs are available. Now is this the same daughter that had a job at Campbell Soup?

A Yes, but the, during the time she was not out there, and she has already been fired from out there and she is not out there now.

Q Did she go to work for Campbell Soup after you filed this charge?

A That's right.

Q Mrs. Mickel, you claim that Campbell Soup Company has discriminated against you?

A Yes.

Q All right, what do you base that claim on?

A My race, first, and that there --

Q Why do you claim because of your race, that you have been discriminated against?

A Because of that Wonderlic test, and the eight grade education that they have there.

Q What else?

A And, and, um, that is about it, because they keep you out of the plant out of work, that Wonderlic test, keep the negro from Campbell Soup.

Q So you base your claim of discrimination upon the Wonderlic test requirement and the eighth grade requirement?

A And my race.

Q Doyou know that that eighth grade educational requirement is that a person has to complete eight grades of schooling? Is that your understand?

A Yes.

Q And you completed more than eight years of schooling?

A No, well that is not the same, because the time I had in school, four months of schod, and five months of school.

Q You completed ten years of public education, didn't you?

A That's the standard to the negro race.

Q Pardon?

A The standard to the negro race.

Q Well you completed more than an eighth grade education? Hadn't you?

A Well, according to the standard to the negro.

Q You put on your application that you had completed ten years, or ten grades?

A Yes.

Q Well you had more than an eighth grade education then, didn't you?

A Yes/

Mr. Finney: We object to the question, argumentative. At, according to the negro standard at the time she was in school, it might have been eighth grade, but shedid not feel it was eighth grade period.

Q (By Mr. Deakins) Your understand was that the requirement was that you just had to have an eighth grade education to get a job?

A Yes.

Q They didn't say what school you had to go to?

A No, didn't say anything about the school.

Q And you admit that you have got a tenth grade education.

A Yes.

Q And you had it at the time you filed your application?

A Yes.

Q Aside from the eighth grade education requipement, the only other way you feel you have been discriminated against by Campbell Soup Company is because they used that Wonderlic text?

A Wonderlic test, and my race.

Q Well you base your claim you have been discriminated against because of your race on these two things, the Wonderlic test and the education?

A Yes.

Q Is there any other thing that you claim has caused discrimination against you because of your race, at Campbell Soup Company?

A Well, the doctor, the physical.

Q You feel like that discriminated against you, because of your race?

A ~~Yes.~~ No.

Q Why?

A Because I went right on and I got examined and the other doctor didn't find wrong with me what the doctor out there found wrong.

Q The doctor who examined you later found you have to have your teeth worked on?

A Yes, I know.

Q And he found that you were overweight.

A You mean the doctor at the plant?

Q No, the doctor who examined you later, said you needed work done on your teeth.

A Yes, I know that.

Q And he also told you you were overweight.

A Well he said I could lose a little weight, he didn't tell me I was overweight to where I couldn't work.

Q Did he tell you your vision was bad?

A Well, he said I could get glasses. I offered all that to Mr. Partin, and he still refused to let me work.

Q Wait a minute now, let me understand what your testimony is. You told Mr. Partin, as I understand it, if he would go ~~a~~ ahead and give you a job you would start having your teeth worked on.

A That's right.

Q You didn't tell him about the glasses?

A No, I tell the doctor.

Q What doctor, at Campbell Soup Company?

A Yes.

Q You told him you would get glasses?

A Yes.

Q Did you tell him you would get your teeth worked on?

A Yes.

Q Did you tell him anything else you would get done?

A Well, my teeth, and um, ~~he~~ I also tell him I would, um, lose some weight. But he say no.

Q Anything else that you base your charge of discrimination on?

A That's about it.

Q At the time you took this manual dexterity test at the State Employment office, you took it with a group of people I believe?

A Yes.

Q Were some of the people negroes and some white?

A All negroes but one white.

Q And you all took it in a group?

A Yes.

Q Received the same instructions?

A Yes.

Q You were not treated any differently at the time you took the test than the white person was treated, did you?

A Well I didn't take it with any white.

Q You took it with a group you said.

A Group of colored.

Q And one white.

A One white.

Q And my question is at the time you were takingthat test, erewyou treated any differently than the white person was.

A Well she didn'ttake the text exactly along with us. She was in the front and I was in the back, but I couldn't tell, but to my knowing, I don't know whether it was different or not. But it didn't seem like it was needed to take that test to work at Campbell Soup.

Q Was there anything unfair in the way they administered the test?

Mr. Finney: Objection, calls for an answer the witness is not qualified to give.

Q (By Mr. Deakins) Was there anything unfair in the manner they administered the test?

A Well, I don't know, but my feeling was it was unfair to the negro because they didn't need it, because, because, I know one worked along with me doing five or six hundred shirts a day and she was turned down.

Q You feel it was unfair because some colored people didn't pass?

A Didn t need it, that's right.

Q But you passed?

A Well, yes.

Q So you were not discriminated against.

Mr. Finney: Objection.

A Well I sure feel it was unfair.

Q (By Mr. Deakins) Do you feel it was unfair because it was unnecessary?

A Unnecessary, right.

Q Is that the only reason you feel it was unfair?

A That's right.

Mr. Deakins: I don't think I have any further questions.

### EXAMINATION BY MR. FINNEY

Q Mrs. Mickel, did you get a copy of the EEOC decision?

A Yes,

Q And, er, did we discuss that portion of the decision which said the manual dexterity test was not properly graded?

A That's right.

Q And you believe that is true?

Mr. Deakins: Objection.

A Yes.

Q (By Mr. Finney) And you discussed the remainigg portion of this decision, is that correct?

A Yes.

Q And generally you agree with the contents of the decision?

Mr. Deakins: Objection.

A Yes.

Q (By Mr. Finney) That it is true and accurate?

A Yes.

Mr. Deakins: Objection.

### EXAMINATION BY MR. DEAKINS

Q Now you say you believe the statement that the test was improperly graded. What do you base that belief on?

A Well because it wasn't needed.

Q Well because it wasn't needed, you think they graded it wrong?

A It wasn't needed for work at Campbell Soup, because I was working all my life and ---

Q Well I understand, but you say you didn't think it was necessary, but you believe that they graded th thing wrong. Why do you think they graded it wrong?

A Well because we, it eliminated negroes of getting jobs at Campbell Soup.

Q Well how do you know that?

A Well I know that myself.

Q You have nothing to base that belief on, do you?

A Well, the way the treatment.

Q What treatment?

A Of being treated by the people.

Q What people?

A At the employment office.

Q The way you were being treated by the people at the employmemt office caused you to believe they mis-graded the test?

A Yes, and I believe it myself, because it wasn't needed.

Mr. Deakins: No further questions.

EXAMINATION BY MR. FINNEY

Q You did read or heard that part of the decision, which said that it was not properly graded, didn't you?

A I read that.

Q And you believed that too, didn't you?

A Yes.

Mr. Deakins: We object.

Mr. Finney: I would like to state at this time that I believe that, although defendants' exhibit number 35 is not a case referred to by this decision, that this plaintiff is one of the parties mentioned in the decision referred to as AC6-9-678 through AC 6-9-774.

Mr. Deakins: Which refers to defendants' exhibit number 10?

Mr. Finney: Well, that is a question.

[illegible]

[illegible]

[illegible]

[illegible] ) [illegible]

[illegible] ) [illegible]

[illegible] ) [illegible]

[illegible] )

[illegible] )

[illegible]

[illegible]

[illegible]

[illegible]

MRS. SALLIE BURGESS

is recalled:

EXAMINATION BY MR. DEAKINS

Mr. Deakins: I ask the Reporter to mark this document for identification as defendants' exhibit number 27.

(Document referred to is received as defendants' exhibit 27 for identification)

Reporter's Note: This short page was necessary to divide Folio 3 from Folio 4. See next page for continuation.

Mr. Finney: We will stipulate that defendants' exhibit number27 is an application filed by Sallie Burgess for employment with Campbell Soup Company in March, and it has been signed by her. I gather that is March of 1966.

Q (By Mr. Deakins) Now Mrs. Burgess, I will show you what has been marked for identification as defendants' exhibit number 27, which we have agreed is the application filed with Campbell Soup Company. You will notice where it is dated, it just has the date March. Would that have been in March of 1966? Inother words last year that you filed that application?

A That's right.

Q Do you have any idea what day of the month it was you filed it?

A No, I don't know exactly the date.

Q Now you notice that on the front page of the application there issome, some of the questions are answered in black ink, such as the date, the name, and so forth. Now are the writings in black ink your writing? Where your name is written, and the date, is that your writing?

A Yes, that my writing.

Q Now you will notice that on the application, for example where it says what relatives do you have in our employ, someone has written in in blue ink, none, and ther are several other things written in blue ink. Now that is not your writing, is it?

A No.

Q That is not your writing under the category of previous employment, in blue ink?

A No.

Q And then under education, where it is written in blue ink, Saint Michael, and over to the right, six (6), that's not your writing either, is it?

A No.

Q And on the back of the application you have signed your name?

A That's right.

Q Now, are the rest of the answers that are filled in on the back side of this application your writing?

A Yes.

Q Now you will notice up in the lefthand corner some writing that says test April 1, and failed MDT, now that is not your writing, is it?

A No.

Q Now when you filled out this application Mrs. Burgess, did you try to answer all the questions truthfully and correctly to the best of your knowledge?

A Yes.

Q When you filed out this application, did you fill it out at the plant?

A No, out at the Tec Center.

Q All right, at the time you filled it out and turned it in did you have any discussion with anyone?

A Yes, after I turned it in.

Q Parton?

A After I turned it in.

Q Who did you talk with?

A I talk to the girl, the girl told me that, um, just to sit for a while, the manager want to talk with me.

Q And then did you talk with ~~the~~ a man?

A Yes.

Q Who was that.

A I don't know who it was.

Q Was it Mr. Partin?

A I don't know.

Q Was it Mr. Gwozdz?

A I don't remember.

Q Do you remember what the man looked like?

A No, I don't.

Q Did he tell you he was with Campbell Soup Company?

A No, he didn't tell me anything, whether he was with Campbell Soup or not, but I know he was a kind of short built man.

Q Now when you talked to this man that day at the Technical Center, did he ask you certain questions about your application?

A Yes.

Q He asked you what your previous employment had been, where you worked?

A That's right.

Q And you told him you had been a domestic?

A Yes.

Q And did you tell him you had worked at Sumter Frozen Foods?

A Yes, that's right.

Q Did he ask you how long you had worked there?

A I don't remember whether he asked me how long or not.

Q Did he ask you some questions about working at Sumter Frozen Foods?

A No, he just asked me had I ever done any type of work of the kind they was going to do at Campbell Soup, poultry work and like that, and I tell him yes, and he asked me wheee at, and I tell him Sumter Frozen Food Company.

Q And did he ask you where you had gone to school, and what grade you had finished?

A Yes.

Q Did you notice that while he was asking you these questions, he was writing something on the application?

A I don't remember no.

Q Well now the statements that are written in this application which are not in your writing,ate those statements true, such as where you worked and so forth?

A Yes.

Q And whether you had any relatives working for the company?

A Yes.

Q And your education?

A Yes.

Q All right. Now Mrs. Burgess, is this defendants' exhibit number 27 the only application for employment you have ever filed with Campbell Soup Company?

A Yes.

Q Now before you filed this application, before, did you ever have any communication with the Campbell Soup people before that?

A No.

Q After you filed your application, did you ever talk with any Campbell Soup people?

A Yes, I told you I talked with the manager first.

Q Now are these the discussions that we talked about yesterday?

A That's right.

Q Do you remember hat you told me yesterday about those discussions.

A Yes.

Q You remember we talked about them?

A Yes.

Q Other than what you told me yesterday did you have any other discussions with any Cmmpbell Soup people?

A After the visiting the plant?

Q Well, yesterday I believe we talked about the telephone calls and some visits to the plant.

A That's right.

Q Other than what you told me yesterday about those visits and the telephone calls, did you have any other discussions with any Campbell Soup people?

A No.

Q All right. Now you didn't file any application for employment with Campbell Soup Company before this one you filed in March, did you?

A No.

Q You didn't file an application with them in January?

A No.

Q Well now when you filled out this application, and the man you talked to asked you questions about the application, did you talk to him bout anything else beside the application?

A No.

Q Now Mrs. Burgess, why didn't you fill in this whole application when you turned it in?

A Why didn't I fill it in?

Q Yes. For Example, you didn't fill in what previous employment you had had. The man had to do that later. Why didn't you fill that in when you turned in your application.

A Well I thought I had fill out all that was necessary.

Q Dhy didn't you fill in the part about your education?

A I thought I had put that on there.

Q I understood you to say that the writing under the category of education, you did not fill in.

A Well I didn't, I said I thought I put it on there.

Q Oh, it turned out you had not, so he filled it in?

A That's right.

Q Now I notice that you put in your application that in case of emergency notify James Burgess, who is that?

A My husband.

Q You have no reason to believe he would give you a bad reference, do you?

A No.

Q And on your previous employment you put domestic, but you don't say who you worked for.

A No.

Q And then you list Sumter Frozen Foods as a previous employer.

A Yes.

Q Do you have any reason to believe you would get a bad recommendation from the people at Sumter Frozen Foods?

A Well, I wouldn't know.

Q Was there anything you did out there you think that would cause them to give you a bad recommendation?

A No.

Q Do you have any knowledge that the people at Campbell Soup Company have ever checked with Sumter Frozen Foods about you?

A I don't know.
Q Now on the back side of your application you list three character references, is that correct?
A Yes.
Q Are the people you listed friends of yours?
A That's right.
Q Do you have any reason to believe that any one of those people would give you a bad reference?
ANo, I don't believe so.
Q All they all three negro people?
A That's right.
Q Do you have any knowledge or information that leads you to believe any one of these three people whom you list as character references have been contacted by Campbell Soup Company representatives? At any time?
A I don't know.
Q Now at the time you filed this application with Campbell Soup Company, had you been referred out there by the South Carolina Employment Security Commission?
A No, I didn't.
Q You just went out there on your own?
A Yes.
Q You went to Tec on your own?
A Yes.
Q Did anybody you talked with when you filed this application

tell you you had to be referred by the State Employment Agency before you filed an application?

A No, they didn't.

Q Now Mrs. Burgess, have you ever filed any other application for employment with any other plants or factory in this area?

A No.

Q You only filedone with Campbell Soup Company?

A That's right.

Q Why did you do that?

A Because I wanted to work out there.

Q But you didn't file any at any other place?

A No.

Q What caused you to file an application at Campbell Soup Company and not filed one anywhere else?

A Well I wanted to work, I figured that was the only job, that a person with little education could work there.

Q What led you to believe that? Why did you think that?

A Because I knowed the work they was doing out there I was doing all my life, and I know I was able to do it, working with chickens and stuff like that.

Q Do you have any relatives who have worked at Campbell Soup Company?

A When I fille that out?

Q At any time.

A I have some in laws out there now.

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Q Who are they?

A Emily Burgess and Rebecca Burgess.

Q All right, anyone else?

A No.

Q Those are inlaws of yours?

A That's right.

Q Are they negroes?

A Yes.

Q Do you know anybody else that works at Campbell Soup?

A Do I know anybody?

Q Yes.

A Yes. I know some people work out there.

Q How many?

A Well quite a few.

Q Approximately how many?

A Oh, about, three or four.

Q All still working out there, as far as you know?

A As far as I know.

Q Are they negroes?

A Yes.

Q Have you ever been arrested?

A No.

Q Now Mrs. Burgess, at any time have you taken this manual dexterity test, or what has been referred to as the finger test?

A Yes.

Q Where did you take it, at the State Employment office?

A That's right.

Q When was that?

A The first of April.

Q It would have been after you filed your application at Campbell Soup Company?

A That's right.

Q Now at the time you took the test, I believe you said you took it at the State Employment office?

A That's right.

Q Was it given to you by a man and a woman?

A That's right.

Q Have you ever seen that man and woman at Campbell Soup Company?

A No, not since, because I never seen nobody out at Campbell Soup but one lady.

Q You have seen Mr. Partin?

A No, I never seen him until I came up here.

Q Now when you took this manual dexterity test did you take it with a group of other people?

A Yes.

Q How many others were there?

A I don't know exactly, a good many.

Q Were some of them negro and some of them white?

A Yes.

Q Did you all take the test there together?

A Yes.

Q Were you given the same instructions?

A Yes.

Q Were you given the same amount of time to complete the test?

A Yes.

Q And this was the test that involved the pegs in the holes and working with the washers, and so on?

A Yes.

Q Did you notice that you were asked to do anything any differently then anyone of the other people were that took the test?

A No.

Q You all were given the same test in every way?

A That's right.

Q Now after you completed the test were you ever told whether or not you had passed it, or failed?

A No.

Q Never were?

A Never was. Until a long time afterwards, I went back up there.

Q All right, who did you talk to?

A I talked to, um, a lady in the employment office.

Q What was your discussion with her?

A Well I wanted to know, well first I called down there and asked them, because they told us we would receive a card in the mail about a week later, that was after we finished the test. And, um, I wait and wait and wait and never did receive no card, I mean, no card, and, um, finally I called back down there and asked had I passed the test and she said she didn't know, she didn't discuss that over the telephone. If I wanted to know I would have to come in and see. And I say well they supposed to send me a card and I never got one, and She asked me how long was it I take the test, and I tell her two or three months ago, and I was waiting and looking, and didn't get no hearing. She say if you didn't get a hearing you automatically didn't pass it, but if you want to discuss it with me, come on down and I will discuss it with you.

Q Did you go and discuss it?

A Yes.

Q Tell me what was said.

A I said I come to see if I passed the test, and she got my file, my application out the file, and she said no Sallie you didn't pass it. You passed it with the pegs but you lacked just a little bit of passing with the screw thing.

Q Anything else?

A And I asked if I didn't pass it could I take it over again and she said no, not under two years, it will be two years before you could take it again. And I said Lord, all that long time befofe I can work anyway? She say that the company rule.

Q That is what rule?

A The company rule.

Q Did she say the company rule or the State Employment office rule?

A She say that the company rule, we got a call from down there this morning, saying they wasn't taking on nobody now nohow.

Q Said what?

A She say if you want to go down thereand check you can.

Q I am not sure that I understand what you are saying Mrs. Burgess. What did she say the company rule was, that you had to pass the test?

A No, it would be two years before you could take it again.

Q Can you describe this woman you talked to? What did she look like?

A I don't know, it was a kind of settled lady like.

Q Have you ever seen that lady out at Campbell Soup Company?

A No, I never seen anyome at Campbell Soup Company.

Q You know anything about the way your test was graded, this manual dexterity test?

A The way it was what?

Q The way it was graded.

A What you mean, how it was grade.

Q Well you were told you didn't pass the test.

A Yes, that's right.

Q Do you know how the State Employment agency graded your test?

A No. Only I know they give you so many minutes to finish it.

Q All right, when you took, when you talked to the lady at the State office, did she tell you how they went about grading the test?

A No.

Q Has any information ever come to your attention that your test was/misgraded in any way?

A Yes.

Q Where did you get that information?

A Because I been, I was doing just as well as others there and better than some.

Q Do you know that the rest of them all passed?

A I don't know who all passed it.

Q How do you know how it was gradedthen?

A Bedause I knowed I was moving my hand just as fast and when we finish with the pegs and come out of that room where the lady was the man said to the lady, this one of the best group, about the best group I have ever tested.

Q Well they told you you passed the peg test?

A Yes, she say I lack just a fraction, just a little bit from passing the, um, the bolt test.

Q Which is the second part of the test?

A Yes, and I know I did that just as fast as anybody else.

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Q Well you don't know whether any of the other people that took it with you passed or failed, do you?

A No, I don't.

Q Well how do you know that your test was misgraded then?

A Well I know if anybody else pass it I passed it.

Q Well you don't know how they graded it do you?

A No, I don't know how they grade it, but I know how fast I was working my hands.

Q Well I don't understand, what you base your belief that the test was misgraded on then. You don't know whether anybody else that took the test passed or failed?

A No.

Q And you don't know how the grade the test?

A No, I don't, but I now I was moving my hands ---

Q Were you moving them as far as you could?

A Yes, I was.

Q Well that doesn't mean you passed the test.

A Well I know if anybody else passed it I should have passed it.

Q But you don't know whether anybody else passed it?

A No, I don't know.

Q When you were working that bolt test were you watching everybody else?

A No, but when the rest finished I was finished too. I didn't had time to look up and watch the rest.

Q You weren't watching the , what the rest were dokng when you were doing the test, were you?

A No, I wasn't watching them.

Q To see how fast they were doing it?

A No, but whenever we finish I look up and see who else finish along with me.

Q How many people did you look at?

A I look around all, we all, some was over here and some over here.

Q Weren't some in front of you and some in back?

A That's right.

Q Could you look at the ones in front and the ones in the back?

A Yes, because I turned around.

Q Could you tell they had finished as much as you had?

A Well I know they stopped.

Q Well you all stopped at the same time, but you didn't see whether or not they had done any more than you had, did you?

A Well, I know, I don't know what they did but I know I stopped as quick as they did.

Q When you finished the bolt test and you looked around, you didn't see whether or not the others had done more or less than you had, did you?

A I didn't see how many bolts they had up there now.

Q And you never received one of these postcards from the State Employment office?

A Never did.

Q Have you ever taken the manual dexterity test again?

A No.

Q Did you ever ask anybody at Campbell Soup Company to let you take the manual dexterity test again?

A Yes, I asked the girl if there was any chance for me to take it over a year, and she say well it will be about two years, because they have ~~66~~ to go around.

Q You remember who that girl was?

A No, I don't.

Q Is your correct birthday December 5th, 1919?

A My birthday, December 5?

Q Yes, 1919, ~~a~~

Q You got December 5 there?

Q I have got December 5 on your application.

A If I put that I intend to put the 29th.

Q What is your birthday?

A December 29, 1919.

Q Well that is your writing on the application, isn't it?

A Where?

Q Where it says December 5, 1919?

A No, that ain't my writing.

Q Well it is in black ink, the way the other portions are.

A But that ain't my writing.

Q That is not your writing?

A No.

Q Did the person who interviewed you ask you what your birthday was?

A I don't remember.

Q I want you to look at that writing again. Now isn't that your writing?

A No, that ain't my writing.

Q Are you sure about that?

A Well I wouldn't be sure, but I will say it don't look like it, and if it is I intend to put December 29th.

Q You ever take the Wonderlic test?

A NO.

Q You know anything about it?

A No,

Q Have you ever seen one of thes test forms?

A No.

Q You know how long you are given to complete the test?

A No.

Q You know what the questions are on the test, any of them?

A No.

Q You have no knowledge whatever of the Wonderlic test?

A No.

Q Have you ever been instructed by anyone as to how to answer the questions on a Wonderlic test?

A No.

Q Reverend Lewis has never told you about the Wonderlic test?

A No, no more than us talking about it in the meeting, telling it was unfair, or we thought it was unfair.

Q You were telling Reverend Lewis it was unfair?

A That's right.

Q What did you base that on?

A Well I just thought it was unfair.

Q Without knowing anything about it?

A Yes. Because I see so many more didn't pass it had higher education than I had and I know I couldn't pass it.

Q How many years of school have you had?

A Sixth.

Q You reached the sixth grade?

A That's right.

Q Did you complete the sixth grade?

A No, I didn't.

Q You only completed five grades?

A That's right.

Q Started the sixth grade and didn't finish it?

A That's right.

Q Now did you flunk any of the grades that you attended?

A No, I didn't.

Q In other words every year you progressed another grade?

A That's right.

Q Now in your answers to interrogatories which you signed and your attorney has filed in this case on your behalf, you said

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You had completed only five months of the fifth grade at Saint John School in Clarendon County , South Carolina.

A Five months of the fifty grade?

Q You said you only completed five months of the fifth grade, was as far as you went to school.

Mr. Finney: That is an error, my notes indicate sixth.

A Must be the sixth grade.

Q So it is correct, the fact is that you completed five months of the sixth grade?

A Sixth grade.

Q And that is as far as you ever got in school?

A That's right.

Q Now do you understand that Campbell Soup Company has a rule that they don't hire anybody that doesn't have an eighth grade education?

A Yes, well that is what I heard.

Q Did anybody at Campbell Soup Company tell you that?

A No.

Q Who told you that?

A Different people.

Q Well did any of those people tell you when this requirement was put in?

A No.

Q You have no knowledge that this was a requirement at the time the plant was opened up at first?

A No.

Q Have you ever been given any physical examination at Campbell Soup Company?

A No.

Q Have you ever been given a physical examination in support of your application atany other plant?

A No.

Q Were you given a physical examination before you started work at Sumter Frozen Foods?

A No.

Q Have you ever had any serious ilness or injüry?

A No, I haven't.

Q Have you ever received any sort of disability payments for any injury or illness?

A No.

Q Now I would like to show you a document which has been marked for identification as defendants' exhibit number 10. I think we can stipulate that her name does not appear on the document?

Mr. Binney: So stipulated.

Q (By Mr. Deakins) Mrs. Burgess, we have agreed that you did not at any time sign defendants exhibit number 10, which is a document that a number of the other plaintiffs have signed.. Did you ever on any occasion sign or file any charge or claim against Campbell Soup Company?

A Yes.

Q What did you sign?

A What did I sign?

Q Yes.

A I signed a complaint against them for discrimination.

Q When was this?

A I disremember what month it was not, I believe it was in, um, I forgot the month.

Q What year was it?

A 1966.

Q You don't know what month it was?

A Let me seee, I don't know. I believe it was October, I ain't sure

Q Well who presented this document for you to sign?

A Who present it?

Q Who wrote it up?

A I sit down and wrote a copy of it myself.

Q You wrote the thing up originally yourself?

A No, I just wrote up my complaint.

Q All right.

A And take it down to, um, the information center.

Q Here in Sumter?

A Yes.

Q You mean the Community Information Center?

A That's right. And they finish typing it for me and I take it with me to washington.

Q You went to Washington?

A Yes, I did.

Q What did it say?

A What did it say?

Q Who was it addressed to?

A To, um, the EOC.

Mr. Finney: We will stipulate that is the EEOC.

Mr. Deakins: Well, I don't know about that.

Q (By Mr. Deakins) What did it say?

A How I was discriminated against.

Q Have you got a copy of that?

A No, I don't.

Q Well when it was, after it was typed up you did sign it?

A Yes, I did.

Q Did anybody make you raise your hand and swear you were telling the truth?

A No.

Q Wasn't sworn to?

A No. It give back to me and I read it over myself.

Q And then after you signed it what did you do with it? You took it to Washington with you?

A Yes.

Q Did you have it in your hand when you took it to Washington?

A Yes, I did.

Q What did you do with it?

A When I went to Washington, turn it over to Reverend Lewis.

Q You gave it to Reverend Lewis?

A Yes.

Q Is that the last you ever saw of it?

A No, I was sitting right at the table when it was laying on the table.

Q Who layed it on the table?

A Reverend Lewis.

Q What table is this?

A In the EOOC office.

Q In Washington?

A That's right.

Q What did you do with it after it was layed on the table?

A I don't what they did with it.

Q Did the Government people pick it up?

A Yes, they they was there, they was looking at it.

Q They read it then?

A We leave it there.

Q Do you know whether or not they kept it?

A Yes, they, we leave them right there.

Q What I am trying to figure out is, you layed it down onthe table?

A That's right.

Q They read it?

A That's right.

Q Do you know what happened to it after that?

Mr. Finney: Object to the question. I think the witness answerdd that. She said she left it right there.

Q (By Mr. Deakins) Do you know whether or not Reverend Lewis picked it back up?

A No, hedidn't pick it back up.

Q You never did send a copy of that letter to Campbell Soup Company, did you?

A No, I didn't, but I take my own self down there.

Q Well I understand that, but I want to know whether you served them with a copy of this letter.

A No, I didn't.

Q Did you receive a copy of this decision from the EEOc, that they rendered on December 5th or 6th?

A I, did I receive a copy from them?

Q Yes.

A No, but they send someone out to talk with us about it.

Q Where is that? Where did they send somebody to talk to you about it?

A Here in Sumter.

Q Where in Sumter?

A Welll, we had a meeting, in a meeting.

Q So you, after the decision by EEOC which you did not receive a copy of, you met with some Government people here in Sumter?

A That's right.

Q Was it at the Community Information Center?

A Now, I don't remember whether it was at a church meeting or the community center, I don't remember.

Q Well did the Government man talk to you privately or individually or was he just talking to the group, about the decision?

A Um, well, he was talking to all of us sitting there.

Q Did he say anything about your individual charge?

A Oh he didn't just point at me and say you, he say all you just filed a complaint.

Q He pointed to the group?

A All who filed the complaint.

Q What did he say about all who filed the complaint?

A Well I just couldn't remember all he said now.

Q Who did you go up to Washington with?

A Reverend Lewis and those.

Q Did you ride up with him?

A Yes.

Q Did you do any talking in these meetings with the Government people?

A Yes.

Q What did you say?

A I tell them how I was discriminated against.

Q You told them how you had been discriminated against?

A That's right.

Q What did you tell them?

A The same thing I tell you.

Q Tell me what you told them.

A Well it was the same thing I was telling you.

Q What did you tell them, I want to know. I don't want you to suppose anything now, just tell me what you told the Government people. I amnot concerned with what Reverend Lewis told them.

A No, I am not talking about Reverend Lewis, I am speaking about me myself, personally.

Q What did you tell the Government people.

A I tell them how I was discriminated against and, um --

Q Tell me what you told them.

A Well I can't remember everything that I told them.

Q Tell me what you do recall.

A Tell what?

Q Tell me what you do remember telling them.

A I know I tell them how I was discriminated against, how I fill in the application and hadn't get no job and I was needed work, and, evertything, how I was discriminated against.

Q What else did you tell them about what you just told me.

A Well I can't remember all of it.

Q You don't remember anything else you told them?

A No, I don't remember everything Itold them.

Q Do you remember anything you told them?

A No, I can't remember anything else.

Q Now you do claim that Campbell Soup Company discriminated against you.

A Yes.

Q What do you base that claim on?

A Well I base it on, I fill out the application and they said I didn't pass it but I never --

Q You didn't pass the application?

A I meant the test, you know what I mean, the finger test. I say I fill out this application, sit down in the employment office to take the test, and after I get down there and take the test they said I didn't pass it. In other words when I went to Washington, I had not get no hearing from it year, and I done fill it out about three or four months. I fill out um, that um, application, in, um, the first of May, April, the first of April, I mean in March, but I take the test the first of April. And when I went to Washington, that was a whole year passed almost, and I didm't get no hearing from them.

Q Didn't get any hearing from who?

A From this test that I take.

Q They told you you had not passed it before you went to Washington?

A They had not told me.

Q Well from what you told me earlier they did. You said before two or three months you phoned up there and she told you if you had not got acard you didn't pass, and then you went up there and talked to the lady and she told you you missed by a little bit on that bolt test.

A Yes, but I didn't been up there then.

Q You had been up there, you called the people at The State Employment office about flunking the test before you went to Washington, is that right?

A I called them before I went to Washington, but I didn't went up there until after I come back from Washington. After she tell me if I didn't get a hearing, automatically I didn't pass it.

Q She had told you that before you went to Washington?

A =Yes, that was before I went to Washington. But I didn't went to the employment office until after I come back from Washington, a good bit after I come back. And I said to myself, um, well she said, I automatically didn't pass it, I am going down there and see because she tell me if I wanted --

Q She said if you wanted to talk about it you had to come down there?

A Yes.

Q But you didn't go before you went to Washington?

A No. But I went a good bit after we come back from Washington

Q Now I had understood your testimony to be that about two or three months after you took the test you went down there.

A Yes.

Q Well are you withdrawing that and saying that is not correct?

A No.

Q Well you took the test in the first part of April?

A Yes.

Q You didn't go to Washington until October?

A That's right.

Q That's a lot more than two or three months.

A Well I am telling you I went there before I went to Washington, two or three months after I took the test I went to the employment office. I mean I called the employment office, didn't went.

Q So two or three months after you took the test you phoned the office?

A Yes.

Q And talked to this lady?

A That's right.

Q And she said well if you have not gotten a card you didn't pass.

A Yes.

Q But you, if you wanted to talk about it, you could comw down there?

A Yes. If I wanted to discuss it, come down there.

Q But you never went to the employment office before you went Washington in October, is that right?

A You mean I didn't went down there before I went to Washington in October/ No, I didn't.

Q All right. And then after you had been to Washington in October, after that you went to the State Employment agency?

A Yes, after I come back from Washington I went back to the employment office, and asked about my test again. That's what I am srying.

Q So you ~~wait~~ waited,from the time you talked to the lady at the State Employment office on the telephone, until the time you went down there to talk to her in person, that is a period of four or five months, is that the way it happened?

A That's the way it happened.

Q But when you talked to her on the phone, she suggested if you wanted to talk about it, to come on down?

A Yes.

Q And you waited that long to go down there?

A Yes, because she told me I automatically didn't pass it, and why I went after I come back from Washington, I wanted to see if I could get it, take it again. And I said I will I will go on down there, maybe I can take it again.

Q So up until the time you got back from Washington you didn't k now you had to wait for two years to take this test over?

A No, I didn't.

Q Any other thing you base your claim of discrimination on?

A Well, yes.

Q What?

A Because when I went down to the plant and asked the lady may I speak to the manager she just crack the door and peep out at me, and first when I went down there and ~~w~~rap on the door, she come and open the door, crack the door and peep out at me, and say may I help you, and I said yes, I want to speak to the manager please, and um, she say well I am sorry we just about to close up, and she closed the door back, and I figure when that door closed in my face I was discriminated against.

Q Because they were closing up?

A No, because the way she did it.

Q How did she do?

A I told you how she did it

Q Didn't she say they were about to close?

A Yes.

Q Well, what was it that she did wrong?

A Well I figured she could open the door and talk to me, and tell me, well we are about to close, you come back another time, or something like that.

Q And you say it was discriminatory, because she didn't invite you back?

A No, I am not saying that. I am talking about the way she talked to me.

Q How did she talk to you that offended you?

A She just opened the door and said may I help you and I aaid yes, I say I would like to speak to the manager, and she say we are about to close, and closed the door right back in my face,

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A No, the girl every time. Never did talk to the manager.

Q All right, now did you ever go back out there individually, to the plant?

A No, never did.

Q You just tried to make this communication by telehpone?

A That's right.

Q Any other way you feel you have been discriminated against?

A Well no, because I never did get the rest of the tests.

Mr. Deakins: No further questions.

EXAMINATION BY MR. FINNEY

Q Mrs. Burgess, do you feel that the eight grade education requirement would discriminate ~~n~~ against you?

Mr. Deakins: I object.

A Yes, sir.

Q Have you had an opportunity to discuss with me the decision of the EEOC?

Mr. Deakins: Object to this whole line of testimony

A Yes, sir.

Q (By Mr. Finney) With regard to the manual dexterity test? Where it says that it discriminated, that the grading was improper? Were you informed that the grading on the test was improper?

A That's right.

Q When you first heard about this plant, did they ever tell you anything about an eighth grade education requirement?

A No, sir.

Q When you made your application in March of 1966, did anyone at the Technical Center tell you you had to have an eight grade education?

A No, the man told me all they wanted was somebody ~~xxx~~ that did that type of work before.

Q And you had done that type of work before, something like that?

A Yes.

Q And that was at the Sumter Frozen Foods Company?

A Yes.

Q Did you ever make an application at the employment office at all, for Campbell Soup Company?

A No, sir.

Q You have heard people talk about how hard the Wonderlic test was for them to take, didn't you?

Mr. Deakins: Object.

A Yes.

Q (By Mr. Finney) And, you made a statement I believe to the effect that you heard of people who had a higher education than you passing the test. Did you, is that what you meant or did you mean the people with the higher education had flunked the test?

A Yes. sir.

Mr. Deakins: Objection.

Q (By Mr. Finney) Had failed the Wonderlic?

A That's right.

Mr. Deakins: Objection.

Q (By Mr. Finney) Summarizing, could I say that you feel that the manual dexterity test, the way it was graded, was discriminatory against you?

Mr. Deakins: Objection.

A Yes.

Q (By Mr. Finney) And you feel that the Wonderlic test as you heard about it would have been discriminatory against you?

A That's right.

Mr. Deakins: Objection.

Q (By Mr. Finney) And that the eighth grade education discriminated against you and other negroes who did not have an eighth grade education?

A That's right.

Mr. Finney: I have no further questions.

EXAMINATION BY MR. DEAKINS

Q When you talked to this person down at Tec, they told you they were looking for people with experience in this kind of work?

A That's right.

Q Now what were you doing at Sumter Frozen Foods, what kind of work?

A Well, um, we was doing, um, not one certain thing, sometimes we been doing one thing and sometimes another.

Q Tell me what you were doing.

A Sometimes we been pulling the craws, get theeggs out the chickens and picking the pin feathers and all like that.

Q Hand picking them?

A Yes, I mean, you know, the machine would pick them, but there would be some pin feather leaft on them.

Q And you were picking the pin feathers?

A Yes, as the line come along.

Q What else were you doing?

A Well that is about all, that I had done.

Mr. Deakins: No further questions.

MR. IVEY MCDOWELL, JR.,

was duly sworn and testified as follows:

EXAMINATION BY MR. DEAKINS

Mr. Deakins: I will ask the Reporter to mark this document as defendants' exhibit number 36 for identification.

(Document referred to is redeived as defendants' exhibit 36 for identification)

Mr. Finney: We will stipulate that defendants' exhibit number 36 is the application for employment filed with Campbell Soup Company by Ivey McDowell, Jr., and that his signature appears on the reverse side of the document, filed on April 25, 1966.

Mr. Deakins: We will so stipulate.

Q (By Mr. Deakins) Mr. McDowell, we have agreed that defendants' exhibit number 36 for identification is the application for employment you filed with Campbell Soup Company.

A Yes, sir.

Q Is this the first application for employment you filed with Campbell Soup Company?

A Yes.

Q Did you file any application with Campbell Soup Company after you filed defendants' exhibit number 26 36?

A Yes.

Q You filed another one?

A Yes.

Q When did you file that one?

A Last of November, 1966, or some, the second week of December.

Q Was it the same kind of form that defendants' exhibit number 36 is?

A Pretty sure it was.

Q Did you answer the questions on your second application the same way you did on the first application?

A All of it not the same thing, because it was a, some other job.

Q At the time you filed your first application, which is defendants' exhibit number 36, where did you fill out that application and turn it in?

A The first one there?

Q Yes.

A Tec Education Center.

Q All right, at the time you turned this application in did you have any discussion with anybody?

A Yes.

Q You talked to some people there?

A Yes.

Q Who did you talk to?

A I don't know by the name.

Q Was it a lady?

A No, it was two men.

Q Do you see any of these men in the room?

A I couldn't swear out to it, but the one with the glasses look like one.

Q Mr. Gwozdz?

A Yes.

Q Was Mr. Partin, sitting next to him, did you talk to him?

A I couldn't swear to it.

Q Now at the time you talked to these two men, did you talk to ~~hxm~~ them together?

A No, sir.

Q You talked to them separately?

A No, I didn't talk to but one, both of them was there together.

Q Oh, but you just talked to one?

A That's right.

Q Was the one you talke to, he looked like Mr. Gwozdz?

A Yes.

Q Did he go over the application with you and ask you some questions?

A I don't remember whether he did or not.

Q All right, now you have written in on this application, all the writings that are in pencil, that is yours, is that right?

A Yes, sir.

Q You notice that a few of the questions are answered in black ink, such as list any physical defects or serious illness, and in black ink, it says none, that is not your writing?

A No.

Q And sdveral other instances where black ink is used, such as shift preferred, is written in "any", date available, is written in "now", and position desired, is written in "plant", now none of that is in your writing is it?

A No.

Q At the time you talked to this man and turned in your application, did he ask you what shift you wanted to be on?

A Yes, I remember that.

Q And you told him you would take any shift I can get?

A Yes.

Q And he asked you when you could, wouldbe available to start, and you said right now?

A Yes.

Q And he asked you what position you wanted, and you said you just wanted to work in the plant?

A Yes.

Q Did he ask you if you had been sick or ill seriously?

A Yes.

Q And you told him you had not been?

A Yes.

Q And you all discussed the application at that time?

A Yes.

Q On the application, I notice you said in case of emergency Parallee McDowell, who is that?

A That's my wife.

Q Is she, she is one of the plaintiffs in this case?

A Yes, sir, that's right.

Q She didn't fill out her application for employment when you were down there filling out yours, did she?

A No.

Q When you went back to file that second application, she, did she file another one too?

A No.

Q Do you have any relatives that have worked at Campbell Soup Company?

A Yes.

Q Who are they?

A Emily Burgess and Rebecca Burgess. That is all relatives.

Q What is their relationship to you?

A In laws.

Q And they are negroes?

A Yes.

Q Do you have any idea that Parallee McDowell would give you a bad reference?

A No.

Q You have listed on your first application three jobs, is that right?

A Yes, that's right.

Q Do you have any idea any one of those three companies would give you a bad reference if they were checked with by Campbell Soup Company?

A No, not excepting but one, Henry P. Moses.

Q You think they would give you a bad reference?

A Might.

Q Why?

A Trying to keep me from going and getting another job.

Q You were working there when you filled out this application?

A Yes, and they wouldn't raise the pay, they give me $1.25 an hour and I told them I was going to look for a better job, long before I thought abot going with Campbell though.

Q And you think for that reason they might givke you a bad reference?

A Yes, sir.

Q Do you have any information that Campbell Soup Company has checked with any one of these three companies you have listed a s references?

A I ksuppose Campbell might have check with Henry P. Moses Company, because --

Q Well, do you know?

A No, I don't know.

Q What makes you think they might have?

A Mr. Tommy Keels mentioned to me a lot of times, that er, you going to Campbells or, you think you might go to Campbell Soup for work.

Q He never has said anything to you about getting a call from the Campbell people?

A No, he didn/t.

Q Now you list three character references on the reverse side of your application. Are the three people that you list, are they friends of yours?

A Yes.

Q Are they all negroes?

A Yes.

Q Do you have any idea that any of those three people would givke you a bad reference?

A No.

Q Do you have any information that Campbell Soup has ever checked with any one of these people?

A No, I don't.

Q Now on your second application that you filed, did you list the same three character references?

A I don't remember whether I did or not.

Q You remember who you gave?

A No, I don't.

Q On your second application you listed some other previous jobs that you had, besides the three you have on this application?

A Pretty sure I did.

Q Do you remember who they were?

A No, I don't.

Q Do you have any idea that Campbell Soup Company ever checked with any of the companies that you did list on your second application, for a reference?

A No, except Mr. Moses Company.

Q Did you list him on that second application too?

A I don't know, but I am pretty sure I list some different jobs than these.

Q Do you have any infomation that Campbell Soup Company has ever checked with anybody for a reference on you?

A No, I don't.

Q Now when you filled out this application you tried to answer all the questions as true and correct to the best of your knowledge?

A Yes.

Q You notice up in the lefthand corner on the front page of defendants' exhibit number 36, are listed the words, "fair", "poor"?

A Yes.

Q That is not your writing, is it?

A No.

Q Now do you know some other people that work at Campbell Soup Company?

A Yes.

Q How many people that you know work there besides your relatives?

A I know a lot of them but not all by their names.

Q Approximately how many people do you know that work out there?

A Well I could be sure of knowing about fifteen or twenty.

Q Are they all negroes?

A No.

Q How many are negroes?

A Well, in the fifteen or twenty, I couldn't separate and tell exactly how many negroes and how many are white.

Q How many negroes do you know that work at Campbell Soup?

A Not by number, I couldn't tell you.

Q You don't have any recollection?

A Not just exactly by number, I couldn't tell you.

Q Well, approximately how many?

A Around fifteen or twenty that I do know, are negores that work to Campbell. And er, I know more people than I said I know, I know a lot of white that work to Campbell, because I have worked on their houses, but I don't know them by their names.

Q But you know fifteen or twenty negroes that work out there?

A Yes.

Q Now at the time you filed this application, defendants' exhibit number 36, which is the first application, can you remember anything else that was said during your discussion with the man, other than going over the application?

A Nything else that was said?

Q Yes.

A Yes, sir.

Q What?

A At that time he was sending a man to Campbell Soup, and um, , and I asked him could I go now too, and he said no, it would be approximately a month or six weeks before we call you, but stand by, we will call you.

Q Did he tell you when the plant was opening?

A Yes, he said about a month of six weeks, it would be in, er, it would be open, in operation.

Q All right, and did he tell you that that is when we are going to start calling people?

A That's right.

Q Is that what he said now?

A That's right.

Q He didn't say he was going to call you, did he? He said
~~A~~ we are going to start calling people as soon as the plant opens in a month of six week?

Mr. Finney? Objection to the question on the ground the witness has already answered and stated he said he was going to call him. And on the further ground, as to the form of the question, that it is anticipating an answer.

Q (By Mr. Deakins) You remember the question?

A The question you just asked me?

Q Yes.

A No, repeat it.

Q When you talked to the man down at Tec and, he told you they were going to be opening the plant in a month or six weeks?

A Yes.

Q And they would start calling people?

A Yes.

Q Isn't that all he said to you about the plant opening and calling people?

A Yes that's all he said.

Q What else did he say?

A That's all he said, at that time.

Q Anything else said in your discussion with that man?

A At Tec?

Q Yes.

A No.

Q All right, now you filed a second application in November of 1966, or the first part of December?

A Approximately, somewhere through that time.

Q All right, and did you fill that one out at the plant?

A That's right.

Q What caused you to file a second application?

A Because in that time, November and December, 1966, they had somewhere around a half a plant of people working, and at the time I fill out that application there he told me the plant wasn't in circulation good.

Q What I am trying to find out why did you feel like you ought to file a second application.

A I went out to the plant.

Q Why did you file another application though.

A I went out to the plant and I went in there, inside the personnel department, and asked the lady, told her who I was, and asked her about that application there.

Q Asked her about the first application?

A That's right.

Q What did she say?

A She asked me where I filled it out at, at the plant? And I told her no, and she said where. I said at Teck education center, and she said well, we don't have a record of that, you will have to fill out another one, I will get you another one from over here in this tray, and you can sit there to that desk there and I willgive you a pencil and you can fill it out.

Q And did you fill it out?

A No, yes, no, I didn't qu te got through filling it out, because um, she told me, I told her I wanted, no she told me, said um, if you want to talk to Mr. Partin, you better catch him before he leave.

Q All right.

A So Mr. Partin walked by and said, um, you want to see me come on in, and that was in the, his office, I suppose, in the personnel department, and I went in.

Q Did you take your application in with you?

A That's right.

Q You hadn't quite finished filling it out?

A No.

Q What had you filled in at that time?

A I don't remember that.

Q Now many questions had you not answered?

A I don't remember.

Q Had you filled out the whole front side of the applicati and were on the back side?

A I don't remember whether it was the front or the back.

Q That you had not filled in?

A That's right.

Q Did, you don't know how many questions you didn't fill in?

A No, Idon't.

Q All right, and then you went in and talked to Mr. Partin?

A Yes.

Q Tell me your discussion with Mr. Partin?

A I told him I said I am out here for a job. I say I fill out an application long ago for a job at Campbell Soup and didn't heard from it, and I just told the girl out front there, and she give me this application to fill out, and I ain't quite finish it yet, but she aay if I want to see you I better catch you right now, and you call me in, I said I am glad to see you. He said well, said, um, I ain't doing no hiring, especially men now. Hiring ladies, and you can go on back and if I see where I can use you or need you I will let you know. I said what about, um, the part of the application that I ~~ain't~~ hadn't fill out yet. And he took it in his hand and he said that will be all right about that, just let me hold it, and he took it and put it in a little tray over there on his desk. So I got up. There was a man out there, that was quitting at the time, because he was chemically burned, in the eye. So he said, and I asked Mr. Partin could I have his job, unless he didn't have an opening for me, and he say he didn't have time to talk with me about it, and he walked off.

Q Did you know who the man was that was quitting?

A No, I don't know him.

Q You know what kind of job he had out at Campbell Soup?

A No, I don't know.

Q Have you ever worked as a maintenance man?

A Yes.

Q Where?

A Dollac.

Q Where?

A Dollac, D-o-l-l-a-c.

Q I thought you worked as a handyman there?

A That is handyman and general maintenance man, anything --

Q You didn't put maintenance on your application.

A No, any man that, any machinery thatbreak or stop latching dollies eyes, and things that hagg up in between the, um, work, I have to take it out and get the machine back on the go, and um, we put parts on motors, and electric motors, and different machinery.

Q Have you ever been to any sort of training school to learn how to be a mechanic?

A No.

Q Now you did 't list anything on your application though, about having any experience as a maintenance man?

Mr Finney We object to the question, the application speaks for itself.

Mr. Deakins: We will stipulate that this application doesn't say anything about working as a maintenance man.

Mr. Finney: So stipulated.

A You see, I am a medanic.

Mr. Deakins: Well I didn't ask you any questions about that. I ask that the answer be stricken.

Q (By Mr. Deakins) Now you don't have any idea how much of the second application you had completed, that second one?

A No, I don't know whether it was near finished ot half way.

Q All right. Did you leave the test with Mr. Partin, I mean the application, with Mr. Partin?

A Yes, he put it in a little tray on his desk.

Q And that is the last you saw of it?

A That's right.

Q All right, in any of these other jobs that you have had, did you have to take a physical examination?

A Yes.

Q Have you ever filled out ---Were you able to pass it?

A Yes.

Q Have you ever filled out an application, a written application before you worked for any of these companies?

A Yes.

Q Have you ever been given any sort of test of any kind?

A Yes.

Q What kind of test were you given?

A Um, math and language test.

Q Math and language test?

A I don't know what you call it but I ---

Q That is what was involved though?

A Yes.

Q Where did you take that test?

A Williams Furniture Factory.

Q Did you pass the test?

A Yes.

Q Anywhere else you had to take any sort of test before you could get a job? That test at the furniture factory was to get a job?

A That's right.

Q Did you get the job?

A Yes, No, not at that time.

Q Did you later get it?

A Yes, I got it later.

Q Did they tell you you had passed the test?

A Yes. That wasn't the reason I didn't get it right at that time.

Q Anywhere else you filed an application that you had to take any kind of test?

A Yes.

Q Where?

A Exide Battery

Q What kind of test did you have to take there?

A Oh, I don't know the name of it but it, um, concerned speed and how good you are with your hands, how fast you are with them.

Q It was not a written test?

A No, not a written test.

Q Did you pass that test?

A Yes.

Q Now when you filed that first application at Campbell Soup Company, had you been referred out there by the South Carolina Employment Security Commission?

A No.

Q At the time you filed your second application, at Campbell Soup Company, had you been referred by the South Carolina Employment Security Commission?

A No.

Q Have you ever been arrested?

A No.

Q Have you ever taken one of these tests, manuan dexterity tests, or finger test, at the State Employment agenty?

A No.

Q Have you ever taken one anywhere else?

A No.

Q Have you ever tried to take a manual dexterity test and been refused?

A No, because I ain't had nobody to put one before me at that time.

Q You never had asked to take one, have you?

A No, because I, no.

Q You know anything about the manual dexterity test, what it involves?

A No, I don't know anything about it.

Q You ever asked anybody out at Campbell Soup Company for permission to take the manual dexterity test?

A No.

Q And you claim in your answers to interrogatories which you signed and filed in this case, that you thought that this manual dexterity test was discriminatory. Do you believe that?

A No, that manual dexterity test?

Q Yes, you think that is discriminatory?

A Well, it could be some people.

Q Do you feel it was discriminatory towards you?

A No.

Q You knew that that was one of the job requirements at Campbell Soup, didn't you, to take the manual dexterity test?

A No, it wasn't atthe time I filed my application out first, it was not.

Q What about the second time?

A Yes, it was the second time.

Q And you knew it didn't you?

A Yes.

Q But you never tried to take one?

A No.

Q Is your correct birthday August 12, 1940?

A That's right.

Q Did you ever take any, this Wonderlic test~~I~~ in support of your application at Campbell Soup Company?

A No.

Q Have you ever taken the Wonderlic test before?

A No.

Q Have you ever been given any instructions as to how to answer the questions on the Wonderlic test?

A No.

Q Reverend Lewis never has given you any instructions?

A No.

Q You know anything about the Wonderlic test?

A No, I don't.

Q You know what the questions are?

A No.

Q You know how long you are given to answer the questions?

A No.

Q Do you feel the Wonderlic test would be discriminatory to you?

A Yes, it would be.

Q Why.

A Er, because, um, when the Wonderlic test, it set out there to take it and be passed, by a person who have an eighth education, and they don't pass it.

Q How do you know.

Q I heard a lot of people told me they didn't pass the test, and I say you don't pass that test and you got a eighth grade education? Yes, and they say it harder than a eighth education.

Q But you don't have any personal knowledge as to that, do you?

A No, not me, but they didn't give me a chance to go far enough to take a test.

Q You don't know whether you could pass it?

A No, I don't, but I have a doubt about it.

Q Becased on what these other people have told you, about their not passing it?

A That's right, I couldn't be so much better than a whole lot more with a eighth grade education.

Q Now you state on your application that you had an eighth grade education, is that true?

A Yes, I have, um, I have ninth grade education.

Q You have a ninth grade education. Did you complete the ninth grade?

From unites that I had, telling me, yes, I complete the ninth grade. Not at that time there. This here supposed to be, um, it supposed to be Saint Mathews high school down here. This was just um, Baltimore --

Q Baltimore was just to the eighth grade?

A No, that was just language school I was going to there.

Q Baltimore was just a language school?

A Yes. And at that time I had it mixed up.

Q Well had you completed the nihth grade before you filled out this application?

A No, not before.

Q When did you finish the ninth grade?

A I don't know, I can't tell you, when --

Q Was it in 1966 sometime, last year?

A I can't tell you that, I didn't know that I had, whether it was a ninth grade education until I start getting units in the subjects that I taken at night adult schook, and this was this last winter.

Q And you discovered that --

A You don't get units until after you have a ninth grade education, then you get units on the subjects you pass, from then on until you get your complete high school.

Q How was it that you found out at that time you had a ninth grade education?

A How, what you say?

Q When is the last year you attended public school?

A Public school? School sitting in the public?

Q As I understand it you attended a night school in the last year? Since you filled out this first application, is that righT?

A Yes. That's right.

Q All right, now I am interested in before that, before that you had attended Saint Matthews school?

A That's right.

Q And had you also attended Stone Hill school?

A Yes.

Q Now what is the highest grade you completed in any one of those schools?

A The highest grade I completed at Saint Matthews, wait, I got it tanglel up, is fourth, and the highest grade at ~~Smk~~ Stone Hill was sixth.

Q Sixth grade?

A Yes.

Q Now that is all the education you had had at the time you filed your first application?

A No, I had some books that I was studying, that I studied before then, on my own.

Q Were you taking correspondence courses?

A I don't kno w what it was.

Q Were you just reading books on your own? Were you taking tests?

A No, I wasn't taking any tests. Studying.

Q As far as actually going to school?

A That's right, as far as, ever learning in school, elementary, six grade. And started in the seventh.

Q So at the time you filed your application with Campbell Soup Company on April 25th, 1966, which is this application ~~kxmy~~ here, the most formal education you had at that time was the sixth grade?

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THIRD JUDICIAL CIRCUIT
SUMTER, S. C.

Q But on the application you said the eighth grade.

A Well that is a mistake.

Q All right. Did you tell anybody at Campbell Soup Company that that was a mistake?

A No, I didn't tell anybody.

Q You didn't tell them anything different from what was written on the application, did you?

A Nobody didn't ask me, didn't get a chance.

Q I am asking if you told them.

A No, Ididn't.

Q So the only information Campbell Soup Company had when you filed your first application was what was written on your application, and that is eighth grade, right?

A Yes.

Q All right. Now at the time you filed your second application for employment with Campbell Soup Company, did you also at that time put down an eighth grade education?

A No.

Q What did you put down then?

A Ninth grade.

Q Well at the time you filed the second application had you completed the ninth grade?

A I was getting units and you don't get units until after you are completed the ninth grade. You don't get units in the eighth grade, if you don't have no more than an eighth grade education you don't get units.

Q So at the time you filed your second application you were getting units?

A That's right.

Q So from April 25th, 1966, until sometime in November or December, 1966, you came up with about three more years of schooling?

A Yes.

Q What school were you going to during that period of time?

A I wasn't going to another school, other than the school that I went, to, Language school in Baltimore, and then the books that I studied at home.

Q Where did you get these books you were studying at home? Did you get them from some school?

A You remember, um, back in 1950, 1952, 1953, people buy, students buy their books?

Q Yes.

A Well I bought these books off of a man who had children that graduated and didn't have any more use for ~~xhmx~~ them.

Q You just bought them from an individual?

A Yes.

Q And read them on your own?

A Yes.

Q Over a period of years?

A Yes.

Q Well after you read the books did you take any sort of test?

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A No.

Mr. Deakins: We propose to stipulate that at the Ivey McDowell, Jr., filed his first application for employment with Campbell Soup Company, which is defendants' exhibit number 36, he had completed a sixth grade education in public school, and that abeginning in October of 1966, he began attending a night school at a high school, studying towards taking a test to receive a high school diploma, which he is still engaged in working on, and he has not taken that test as yet.

Mr. Finney: So stipulated.

Q (By Mr. Deakins) Now have you ever been in the armed service?

A No.

Q Have you ever triek to get in the armed servcice?

A No.

Q You have hx never been turned down for the armed forces?

A Yes.

Q When was that?

A 1960, as far as I can remember.

Q What was the reason for your being turned down?

A I don't know.

Q They didn't give you any reason?

A No, I don't know the reason.

Q Well were you volunteering for the servicke or being drafted?

A No, just was called to be examined, that is all.

Q What kind of examination did they give you?

A Chest x-ray --- other physical examination.

Q Besides the physical examination, they, did they give you any sort of other type of examination, such as written tests or anything?

A Oh, yes.

Q They gave you written tests?

A Yes.

Q Were they aptitude tests?

A Idon't know what kind.

Q Was this the army?

A Yes, it was the army.

Mr. Deakins: Iwill stipulate he was given physical examination and standard written tests the army required.

Mr. Finney: We will so s;tipulate.

Q (By Mr. Deakins) Where was this?

A Fort Jackson, Columbia, South Carolina.

Q After you finished these tests what did they tellyou?

A I don't know, if they told us anything or not.

Q Did they tell you you were being turned down?

A No.

Q Did they tell you anything?

A No, because I didn't know then whether I was going in the army or not.

Q Well did you ever hear anything from them?

A Yes.

Q What did you hear from them?

A I don't know what it was, they sent back two classification cards.

Q How did they classify you?

A They send back my old one which was 1-A, and one with 4-F on it.

Q Now you never were given a physical examination out at Campbell Soup Company?

A No, I haven't had one out there.

Q And you never have filed or signed any sort of charges against Campbell Soup claiming discrimination?

A Yes.

Q Beg your pardon?

A Repeat it again?

Q Did you ever file or sign any sort of charge or complaint against Campbell Soup Company?

A Complaint? Yes.

Q When was that?

A Now, I don't know.

Mr. Deakins: We propose to stipulate that Mr. Ivey McDowell, Jr., has never filed any sort of charge of discrimination against Campbell Soup Company, at any tim prior to filing this lawsuit.

Mr. Finney: So stipulated.

Mr. Deakins: No further questions.

EXAMINATION BY MR. FINNEY

Q Ivey, between your first and second applications, did you have another job? Did you leave Henry P. Moses and go to work for somebody else, before your first and second applications at Campbells, did you change jobs?

A Between the period of time of the first and second applications?

Q That's right.

A Yes. But I wasn't working for anybody at the second application.

Q All right, do you know why the notation on your application has been changed fro "fair" to Poor", or from "poor" to "fair"?

Mr. Deakins: I object on the characterization of change.

A No, I don't know.

Q (By Mr. Finney) Well do you know why two notations were made on your application, "fair" and "poor"?

A No, I don't know.

Q From the conversation you had with the man you think was Mr. Gwozdz at the Technical Education Center, did he tell you he was going to call you in a few weeks?

A Yes, because hetold me to stand by.

Q And that he would call you?

A Yes, he said, in approximately a month to six weeks.

Q And that is what you recall that conversation to be? Is that what you recall it to be, that he would call you within a month or six weeks?

A Yes.

Q Had you at any time heard from your first application at Campbell Soup before you went back to make your second application?

A No.

Q And the man who was quitting, you said you didn't know him?

A No.

Q Did you see him or hear him when he told the manager he was quitting? How did you know he was quitting?

A I saw him, and, he was rubbing on his eyes and he had a pair of shades on, and I heard him telling it.

Q Was that man a white man or a negro?

A White man.

Q Do the words handyman and maintenance man mean the same thing to you?

Mr. Deakins: I object.

A Well, no, handyman is aman that --

Mr. Deakings: Withdraw the objection.

A That you can tell well go to some warehouse, you tell him I want you to box up these goods here and put them on a flat and I want you to fill some cans of shellac or someting, and I want you to take this order over to the next building, or I want you to mix a vat here fxs for me.

Q (By Mr. Finney) All right, so when you put handyman on your application, what did you mean?

Mr. Deakins: I object.

A Imean a man you can tell to do more than one thing and he is handy with doing it.

Q All right, you said you were a mechanic, how did you learn to be a mechanic?

A I learn that by working with engines, getting old motors and cranking them --

Q Cars you are talking about?

A Yes, and getting mechanic books and studying it, finding out whether I am right or whether I am wrong, whether I am putting something together backwards or forwards.

Q Did anybody at Campbell Soup ask you what type of work you did as handyman for Dollac Company?

A No.

Q In fact what kind of work did you do there? I believe you hade already said repairing parts, machines and those things?

A That's right, and put out eyes for the girls to shellac, dolly eyes.

Q You do recall that on your second application you had filled in down to the references, because you said that the references may have been different?

A Yes.

Q Do you remember whether you signed your second application or not?

A No.

Q The test you took at Exide, you don't know whether that was a manual dexterity test or not, do you?

A Um, I guess that all you, I don't know whether it, it --

Mr. Deakins: Objection.

A I don't know if that is the name but it is more like a manual dexterity test than it is a test with math and language on it.

Q It is a test in which you use your hands, is that right?

A That's right.

Q Where did you take this test?

A Exide Battery.

Mr. Finney: Nothing further.

## EXAMINATION BY MR. DEAKINS

Q The test you took at Exide Batter, which you call a manuan dexterity test, did you put the pegs in the holes?

A No.

Q Were you working with bolts?

A No, but you was using a pencil, putting dots in certain places and tracing lines where they go all over, all kind of stuff.

Q Now I am a ~~wk~~ little convused. From the time you filed your first application in April, until you filed your second application in November or December, did you have any other jobs in there?

A The same job, Henry P. Moses Company, which I told them I was going to get anpther job.

Q But at the time you filed your second application you were not working there any more, is that right?

A No, Iwasn't working there.

Q Did you work for any other company during that period of time? In other words you quitefworking at this company you were working at, which was Henry P. Moses?

A No, nothing in between that time but, um, shortly after I filed the second application --

Q I am not interested in what you did after you filed the second application. But from the time you filed the first one in April, until you filed the second on in November or December, you were not working for any other company?

A No.

Q When you talked to this man down at Tec, I am trying to find out exactly what he told you. Now I don't want to mis lead you, but I am trying to get you to recall examtly what he said as best you can. Now youtold me he made some mention of the fact that the plant would be opening in a month or six weeks. Did he say that?

Mr. Finney: We object tothat, on the ground the characterization of what the witness said is not complete. We think

~~W~~ the record speaks for itself as to what he said prior~~K~~ to the time he answered that question.

Q (By Mr. Deakins) And then he said in addition to saying something about when the plant was going to open, he said they were going to start calling people at the time they opened the plant, is that right?

Mr. Finney: Objection.

A Yes, and he said you stand by, that we will call on you in possible a month or six weeks.

Q All right, his words were they, you stand by and we will possibly call you in about six weeks?

Mr. Finney: Objection.

Mr. Deakins: That's what he said.

Mr. Finney: I don't believe he usedthe word possibly.

Q (By Mr. Deakins} Yes, he did. Is that your testimony?

A Not possibly, I said probably.

Q All right Mr. McDowell, tell me what the man did tell you about standing by.

A He said stand by, we probably will call you in a month or six weeks time.

Q He used the term "probably" instead of"Possibly"?

A Possibly or probably one, I cauldn't be sure which one he said, but it is one of them. But the meaning that --

Q- No, I am not interested in what he meant.

Mr. Deakins: No further questions

MR. JAMES F. PARHAM

is recalled:

EXAMINATION BY MR. FINNEY

Q Mr. Parham, you are still under oath. As I recall it Mr. Deakins asked you a question asto how you knew who was a college graduate who had taken and failed the Wonderlic test at Campbell Soup Company.

A There was several names that I had, um, but, you know, I am not an investigating officer, and, but I investigated and I found that one of them is working down there now, and told me not to call his hame in court, and he has a good job out there, and um, of course--

Q Let me ask you this question Mr. Parham --

Mr. Deakins: This is one of the college graduates?

A No, he is not a college graduate, they said they were. I have no way, but I do know they finished high school, because --

Mr. Deakins: What is this man's name that is working out there now?

A I told you he asked me not to call his name.

Q (By Mr. Finney) Wait a minute, let me ask you this, do you know of any college graduate who has taken and failed the Wonderlic test at Campbell Soup?

A Well they told me they finished college but I found out they didn't.

Q Do you know any college graduate that took the Wonderlic test and failed it?

A No, I don't.

Q Do you know of any in the past that took the Wonderlic test and failed it, of your own knowledge?

A No, because the one I started to give you didn't.

EXAMINATION BY MR. DEAKINS

Q The one that you thought had flunked it actually passed it and is working out there?

A Yes.

Q Is he a negro?

A Yes.

Q I have one other question to ask you. Was there any person's name ever brought to your attention as working at Campbell Soup Company when he couldn't read and write?

Mr. Finney: Objection to the question, I don't believe it has been asked before, as to the form and as to the contents on the ground it is irrelevant to the issues involved here.

Q (By Mr. Deakins) You understand the question?

A Repeat it please.

Q The question is has it ever come to your attention that there is someone working at Campbell Soup Company that doesn't know how to read and write?

A Now, this off the record?

Mr. Finney: No, you are sworn.

A No, I don't know of anyone out there that can't read and write.

Q Well did anyone ever come and tell you that there was someone out there that couldn't read and write?

Mr. Finney: We object to that question on the grounds that his answer would have to be hearsay, and further on the ground that it is irrelevant to the issues involved here. I don't think this witness would be competent to testify as to what somebody else told him. He stated that he does not know of his own knowledge anyone that cannot read and write.

Q (By Mr. Deakins) My question now is did it ever come to your attention that there was somebody out there working at Campbell Soup Company that could not read and write.

Statement by Mr. Finney off the record.

Q (By Mr. Deakins) Now Mr. Parham, did anybody ever tell you that there was somebody working out at Campbell Soup Company that didn't know how to read and write?

A Well I have heard of that but that is just hearsay.

Q All right, who did you hear it from? Was it Mrs. Beulah Rhodes?

A Well, yes, I heard it from her.

Q Did Mrs. Rhodes later come back and tell you she had been wrong about this person, and that the person could read and write?

A I heard you all say so.

Mr. Deakins: No further question.

MRS. BEULAH RHODES

is recalled:

EXAMINATION BY MR. DEAKINS

Q Mrs. Rhodes, when I asked you questions earlier, we talked about this conversation you had with Mr. Partin about somebody being out there that could not read and write. You remember that?

A Yes, I remember it.

Q Now did that whole subject come up when you told Mr. Partin that he had people out there that couldn't read and write?

A I ktold him he had people working there that couldn't read and write as well as I could. I didn't say they could not read and write.

Q But that is the way the whole discussion abot knowing how to read and write came up?

A That's right.

Q All right. And then Mr. Partin, you told him who you were talking about, gave him the name of the person?

A Yes.

Q And it was at that point Mr. Partin went and got her application and test paper?

A That's right.

Q And showed you this woman could read and write?

A He said she could. He showed me the application, I don't know whether she filled it out of wrote the test herself, I didn't see her do it. I only have his word for it.

Q And then you went back and told Reverend Lewis after that, and Mr. Parham and the others, that Mr. Partin had told you this woman couldn't read and write, didn't you?

A No, I never told Reverend Lewis, I didn't tell no certain one, but Reverend Lewis was not at this meeting.

Q But you told it at a meeting, that this woman whom you all had discussed couldn't read and write?

A I said Mr. Partin claim that this woman have a ninth grade education, and if she had a ninth grade education she was the dumbest ninth I have seen.

Mr. Finney: I move that the last part of that answer be be stricken.

Mr. Deakins: I agree with that.

Q (By Mr. Deakins) But you agree that Mr. Partin had told you this woman had a ninth grade education?

A That's right.

MRS. MABELL WILLIAMS

was duly sworn and testified as follows:

EXAMINATION BY MR. DEAKINS

Q All right, now Mrs. Williams, are you married?

A Yes.

Q And, have you ever filed any application for employment at Campbell Soup Company?

A Yes.

Q How many applications did you file out there?

A Two.

Mr. Deakins: I ask the Reporter to mark this document for identification as defendants' exhibit number 37.

(Document referred to is received as defendants' exhibit number 37 for identification)

Mr. Deakins: I ask the Reporter to mark this document for identification as defendants' exhibit number 38.

(Document referred to is received as defendants' exhibit 38 for identification)

Mr. Deakins: I would like to ask the Reporter to mark this document for identification as defendants' exhibit number 39.

(Document referred to is received as defendants' exhibit 39 for identification)

Mr. Deakins: We offer to stipulate that defendants' exhibit number 37 is the application for employment signed by Maebelle Williams, and signed by her on the reverse side on or about January 11th, 1966. We further offer to stipulate that defendants' exhibit number 38 is an application for employment with Campbell Soup Company, that Mrs. Williams signed on the reversie side and filed on or about April 5th, 1966. We further offer to stipulate that defendants' exhibit number 39 is a postcard that Mrs. Williams received.

Mr. Finney: So stipulated. And that the postcard requested her to report on April 6th, to Campbell Soup Company.

Mr. Deakins: Right. So stipulated.

Q (By Mr. Deakins) Now Mrs. Williams, I notice, I would like to show you this document, marked for identification as defendants' exhibit number 37, and we have agreed that that is the application you filed with Campbell Soup Company in January. Where did you fill out and turn in that application? Was that at Tac?

A This at the employment office.

Q State employment office?

A Yes.

Q All right, and then defendants' exhibit number 38 is your second application, which you filed about April 5th, 1966.

A Yes.

Q Now at the time, where did you turn that one in, out at the plant?

A At the Tec Center.

Q At the time you filled out and turned in your first application you didn't talk to any body~~x~~ at Campbell Soup, Did you?

A No.

Q At the time you filled out and turned in your second application in April, did you talk to anybody at Campbell Soup?

A I talked to a lady.

Q Before you filed your second application, had you talked to anybody at Campbell Soup Company?

A No.

Q At the time you filled out your second application and had this discussion with the lady, tell me what it was.

A I said something about getting an application and fill it out and she told me yes, and I got it and fill it out. And she said later probably they would call me to be reviewed out to Tec.

Q Pardon?

A Probably they would call me to be review.

Q She, when she was talking to you, did she ask you what ages your children were?

A No, she didn't.

Q On your second application, which is defendants' exhibit number 38, you will notice where it says number of children, isn't that your writing, 10?

A That's right.

Q And then somebody else has filled in in parentheses, 19-3, or 2, I can't tell, that is not your writing, is it?

A No, sir.

Q Are you sure that lady didn't ask you something about how old your oldest child was and how young your youngest one was?

A That the application I fill out at Tec?

Q Yes.

A No, sir, that was after.

Q That was later?

A That's right.

Q Well were you later called in for an interview?

A That's right.

Q When was that?

A When I receive the little postcard.

Q All right, so you received defendants; exhibit number 39 and then you took that postcard where, to the plant or to Tec?

A Out to Tec.

Q And who did you talk to then?

A I talk to Mr. Partin.

Q What was your discussion with Mr. Partin at that time?

A He was reviewing people for Campbell Soup.

Q And tell me what was said.

A He just asked me how many children I had, and did I have anyone to take care of the small ones, and how old was the oldest and the youngest, and I tell him, and he told me probably they would open, he didn't tell me exactly when they would be open, he said they had not finish yet, but when they open probably I would be in the first group.

Q What else?

A I told him I would be looking towards that and I asked him would he be the man to do the hiring, and he told me no.

Q Who did he tell you would be doing the hiring?

A He told me I would have to see another man when I get there, and I tell him thank you and I came on out.

Q Now in other words the plant hadn't even opened by the time you filed your second application?

A No, sir.

Q Now before you received this card, which is defendants' exhibit number 39, had you taken this manual dexterity test?

A Yes., sir.

Q Did you take that down at the State employment office?

A Yes, sir.

Q Did a man and a woman give you the test?

A A man give me the first part and a lady give me the last part.

Q All right, and this was a test that involved the bolts and pegs in the holes, and so on?

A That's right.

Q And then after you finished that test did they tell you you would reveive a card if you passed?

A Yes, sir.

Q And then you later received this card?

A That's right.

Q At the time you took the manual dexterity test were there other people taking it with you?

A Yes, sir.

Q How many?

A About thirteen or fourteen.

Q How many were negores?

Q How many were negroes?

A I disremember now.

Q Were there some white people taking it and some negroes?

A Yes, sir

Q Did you all take the test together?

A Yes.

Q Were you given the sae instructions?

A Yes, sir.

Q Were you given the same amount of time to finish the test?

A Yes, sir.

Q Was there anything that you noticed that was different in the way they handled any particular people that were taking the test from the others?

A Some just couldn't do it as fast as the others.

Q But the people giving the test were treating you all the same way, weren't they?

A Yes.

Q After you talked to Mr. Partin, and delivered him that postcard, did you ever go back and talk to Mr. Partin any more?

A I didn't go back right after the plant opened, because I got a job down to Pioneer Dress Shop, and when they first opened I didn't go back down there until about a couple of months after it opened.

Q When did you, this is the dress factory?

A Yes, sir.

Q When did you get your job there?

A I got it the day after the 4th of July.

Q When?

A The 5th day, after the 4th of July.

Q So how long did you work out there?

A I work there four weeks and about three days.

Q What were the circumstances of you leaving?

A It was just, um, it was a part time job, night shift, and they closed down.

Q So you worked at the Pioneer Dress Shop for probabably sometime in August?

A Yes.

Q Now until you left your job at Pioneer Dress Shop you didn't have any further communication with anybody at Campbell Soup?

A No.

Q Until such time as you, since the time you talked to Mr. Partin at Tec?

A Right.

Q Now after August when you left your job at Pioneer Dress Shop, did you ever have any discussion with anybody at Campbell Soup Company?

A Yes, sir.

Q Who was that?

A Mr. Partin.

Q On how many occasions approximately?

A I couldn't tell.

Mr. Finney: We will stipulate more than one occasion.

Q (By Mr. Deakins) No, how many times did you talk to Mr. Partin after you left Pioneer Dress Shop?

A I just couldn't tell you, because I was out working, my husband had his arm break at the time, and I had to do something to keep going.

Q You talked to him a large number of times?

Q That's right.

Q Would it be as many as fifteen times, or twenty times?

A No, it wouldn't be that many times.

Q How many tims?

A I would say around seven or eight times.

Q Well didn't it actually turn out that you would go out there one day and talk to him add would come back the next day and talk to him? You talked to him two days in a row sometime, didn't you?

A Yes, sir.

Q Now tell me what your discussions were with Mr. Partin.

A Well I just wanted work.

Q And you would just tell him, you told him that?

A Yes, sir, I just tell him my complaint and how Ifeel about it because I needed work and I was in need.

Q Anything else?

A And he told me, say well,X probably when he get an opening he will call me, and I keep going so regular, and the last time

I took my husband out there, about the fourth time, and I was sitting there and he asked me did I want to see him, he didn't know I had brought my husband, and I told him, I talked to him and I told him that I brought my husband down there to see could he get a job down there, because his arm was getting better a little, and I was out of work and the children wasn't working and we needed for some kind of work, and he told me ain't nothing he could do about that. And I told him if he couldn't hire me could he give my husband something to do, and he say no, he don't know, he will talk to him about that, and he came out and he talked to my husband, and he say did he have an opening he would call him.

Q All right, did you answer a lot of the questions that he asked your husband?

A No, I didn't asnwer them, I wasn't in there.

Q Anything else you can remember about any of your discussions with Mr. Partin?

A Well I told him I understand a good many work down there after I filed an application, and I knowed that they were working, and he were hiring people, and I tell him I would like to get work if it nothing but maid work.

Q Anything else?

A Well I think that the most what we talk about.

Q Now on one of these occasions you asked to take the Wonderlic test, didn't you?

A Yes, that was a good while after that.

Q Well I am asking you about all your discussions with Mr. Partin.

A Oh, you wanted up to now. Well yes, and he asked me, I believe that the same day I take my husband out there, and he say, you want to take the Wonderlic test, and I say well, if I have to take it I will try and see could I pass it, and he say go back there and try.

Mr. Deakins: All right, I would like to have the Reporter mark this document for identification as defendants' exhibit number 40.

(Document referred to is received as defendants' exhibit 40 for identification)

Q (By Mr. Deakins) Now Mrs. Williams, at the time you took this Wonderlic test, did you take it with a group of other people? Were there some other people in there taking it?

A No, just my one was back there.

Q You were the only one taking it?

A Yes.

Q Who gave you the test?

A One of the girls out the office.

Q Did she tell you to read the front page of the test first, read the instructions?

A No, she didn't.

Q What did she tell you?

A She just opened it and showed me, said um, I am sure the first, first words --- you will just have to go by it.

Mr. Finney: We will stipulate that this is the test that Mrs. Williams, being exhibit number 40, took on or about August 25th, 1966, known as the Wonderlic personnel test form number 1, and she has signed it on the front page and dated it.

Mr. Deakins: We will so stipulate.

Mr. Finney: And that she, that her writing is everything except the notations at the corner top of the pages and the X marks beside the answers.

Mr. Deakins: We will so stipulate.

Q (By Mr. Deakins) Now Mrs. Williams, at the time you took this test, when you walked in didn't she lay the test before you?

A She showed me, said I think it was the first one, she showed me one, she say you have to go along with the first line, and from that on you have to do it yourself, I will just show you the first lin of it.

Q So she explained in some way the first page of the test, where you wrote your name?

A I think that what it was, I am not sure.

Q All right, and then did she tell you you would have a certain amount of time to complete the test, and that the buzzer on the clock would go off and you would have to stop?

A She told me I would have twelve minutes to do it. She didn't tell me about the buzzer on the clock.

Q Then did she tell you when to start the test?

A Yes.

Q And did you start it at that time?

A I did.

Q And did you work on it until she told you to stop?

A Whenever she come back, I don't know what time it was, she come back and told me the time was up and I stopped.

Q So after you worked on it for a while she came back in and said time is up and took your test?

A That's right.

Q At the time you were taking the test were you there alone taking it?

A That's right.

Q And after she had taken the test from you, did you talk to anyone about the test?

A I talked to Mr. Partin.

Q Mr. Partin called you in his office?

A Yes, sir.

Q What was your discussion with Mr. Partin?

A Well he told me, you didn't pass the test, and I asked him what part did I not pass, and he said you have to do eleven of these before you pass, and I said it look like this, I wouldn't have to have a test to work here, because this common maid work, and he say you definitely have to pass this before you can go back in the back to workk.

Q And did he tell you that you just made a total score of seven on the test?

A No, he didn't tell me how much I make.

Q Did he go over the test with you?

A No, sir.

Q Did he show you the, did you see these X's on there?

A No.

Q He had the test with him when he was talking to you, didn't he?

A But he didn't go over it with me.

Q Did he show it to you?

A No, just tell me I didn't pass.

Q Well, all right, is that all the discussion you had with Mr. Partin at that time?

A That's right, I come out that time.

Q And Mr. Partin told you at that time, you had to make eleven on the test before you could work in the plant?

A That's right.

Q After that did you go back out and talk to Mr. Partin any more?

A I wait a couple of weeks and I went back.

Q Who did you talk to then?

A Mr. Partin.

Q What was your discussion with him?

A Still asking about a job, and I asked him if he didn't have, if I couldn't get a job of boning chickens, I didn't do anything but this same about boning chickens, and if I couldn't get that , what about giving me a maid part, just cleaning and sweeping. And he say you just have to pass the test before you go back there.

Q What else?

A Well I told him thank you, and I went back a couple of times more.

Q Tell me your discussion on those occasions?

A About the same thing, about work.

Q What did Mr. Partin say?

A Well, he said it will be the same old thing, you just have to pass the test before you can go backthere.

Q Anything else?

A I told him I didn't see no reason why he couldn't let me have a maid job, cleaning, and he said you have to pass the test, and I talked with another man, and he said I can't tell you no more than Mr. Partin already tell you.

Q You talked to the man here in glasses?

A I guese it was him, I don't know.

Q You talked to some other man out there?

A Yes.

Q And he told you he couldn't tell you any more than Mr. Partin had told you?

A That's right.

Q Did he tell you anything else?

A Well, he say you have to go further and hunt a job some other place. And I thank him and come on out.

Q Do you remember anything else that was said in any of your discussions with any of the representatives of Campbell Soup Company other than what you have told me?

A I was there a couple of times more.

Q Other than what you have told me?

A That's right.

Q Who did you talk to then?

A I talk to Mr. Partin.

Q What was your discussion with Mr. Partin on those other occasions?

A About a job.

Q What did you say to him?

A Oh, I forget, he asked me about, um, he asked me later on, he asked me why did I wrote a letter, and I told him.

Q Said what?

A Why did I wrote the letter.

Q What letter?

A To the NCCP I think it was.

Q You are talking about a letter you wrote to the Government?

A That's right.

Q What did he ask you about that?

A He asked me why I wrote it and signed it.

Q Did you tell him you had written a letter?

A Yes, I told him I had wrote it ---

Q Did you tell him who you wrote the letter to?

A Yes.

Q And he asked you why?

A Yes, he asked me why, and I tell him I wanted abetter job than what I had.

Q What else?

A And he say well, you just don't qualify, because you wrote the letter. He say you won't be qualified here because you wrote the letter, and I said well, why --

Q Now this is not a laughing matter, and you are under oath, sworn to tell the truth.

A I am telling the truth.

Q Did Mr. Partin ~~did~~ tell you that writing a letter kept you from getting a job?

A Yes.

Q Tell me what he said.

A He say why you wrote the letter. Isay what letter you speaking about, I forget about the letter at the time, and he say well you didn't sign no letter, and I tlld him yes, sir, and that time he pull the letter out the drawer and say you want to read it, and I say yes, sir, I will read it, and he say never mind, and he asked why I write it, andI say I wanted abetter job.

Q All right, what else?

A Well he said you don't qualify for Campbell Soup Company then, and I asked him why, and he say well, because you write this letter.

Q Now he didn't tell you that was the reason you didn't qualify?

A Yes, he did, he told me that, you would have to go further and look for a job some other place. And it hurt my feeling, and I tell him thank you and walk on out.

Q Mrs. Williams, tell me what his exact words were whtn he told you didn't qualify for work at Campbell Soup Company.

A That what he tell me.

Q Tell me his exact words, exactly what he said to you?

A That what he tell me.

Q Tell me what he said.

A He say you won't qualify for Campbell Soup, after you signed this letter, that is what he tell me. That because I asked to talk to the other man, that what caused me to ask to talk to the other man.

Q When was that conversation?

A I forget what month it was in now. I see him so many times out there.

Q How many times before that had Mr. Partin told you you were not qualified for a job out there because you had not passed the Wonderlic test?

A About two times. I didn't go out there but two times after that.

Q So there were two times before that Mr. Partin had told you you didn't qualify for a job because you didn't pass the Wonderlic test?

A That's right.

Q Did he mention anything about this letter you had signed before that?

A No, because I don't guess the letter was there at the time.

Q When did you write the letter?

A Sometimes in November or September, I forget now what date.

Q Well when were these discussions with Mr. Partin, when he told you you couldn't qualify for a job because you didnpt pass the Wonderlic test?

A Sometime in September.

Q Both of them?

A Probably in October too, becasue I went out there until Christmas and I didn't go back any more until this year.

Q Did you have any discussions with Mr. Partin the latter part of October, when he told you you didn't qualify bmfxm because you didn't pass the Wonderlic test?

A I take another girl out there and I talk to him then.

Q Latter part of October?

A I think it was about in November then.

Q And he told you you didn't qualify because you didnpt pass the Wonderlic test, is that right?

A He didn't say nothing about the Wonderlic test any more.

Q What did he say to you in the first part of November, when you went out there with this other girl?

A He tell me, said um, I thought I told you as many times you come ~~yox~~ out there the same old thing, and I tell him, I say well I thought maybe something might come up that I could do, and he say no, it will be the same old thing, you got to pass the test before you can go back there.

Q And that was in November?

A That's right.

Q When did you have this last discussion with Mr. Partin?

A Last Monday a week ago.

Q Last Monday a week ago?

A Yes, sir.

Q Is that when Mr. Partin told you about the --

A Not Mr. Partin, I talked to him, indicating, Mr., um, I don't know his name.

Q Gwozdz?

A Yes, sir.

Q Well when was it that Mr. Partin told you about, you talked to Mr. Partin about signing this letter?

A That was in October or November.

Q 1966?

A Yes, sir.

Q Did you talk to Mr. Partin at any time after that discussion?

A I think that was the last time until up in January.

Q Well, you had this discussion sometime in November with Mr. Partin about signing this letter, and then after that you went back out there in December and talked with Mr. Partin again?

A Yes.

Q What did he tell you then?

A Tell me it would be the same old thing.

Q What did he say, the same old thing.

A I had to pass the test, that what he meant I guess.

Q Did he tell you anything about the test?

A No, sir.

Q He didn't say you didnpt pass the test, and you can't work out there until you pass the test?

A No, he didn't say anything about that.

Q What did he say?

A He say just the same old thing, I ain't got nothing else to tell you about

Q And that was in December?

A That was in January, I believe it was.

Q Did you talk to Mr. Partin after January?

A No, I didn't.

Q Never talked to him since January?

A No, I don't think I did.

Q And you went out about a week ago and talked to Mr. Gwozdz?

A Yes, sir.

Q What was your discussion with Mr. Gwozdz?

A I still was asking for work.

Q What did he say?

A He said I don't have any more to tell you than Mr. Partin already tell you.

Q Did you tell him who you were?

A Yes, sir.

Q Did you ever talk to Mr. Gwozdz before?

A I don't know if it Mr. Gwozdz, which one it was, --

Q Well whoever it was, did you ever talk to that person before last week?

A I don't know, I didn't definitely know them apart. You see there was two men, about the same tallness, I didn't know them apart.

Q You mean you talked to at Tec?

A No, at Campbell Soup, the personnel office.

Q This man you talked to a week ago, you think you talked to him before?

A I don't know.

Q Well tell me the discussion you had with him?

A Well I just asked did he have a opening, and he said no, it will be the same old thing Mr. Partin already told you.

Q Did he say anything about a test?

A Not thatI remember.

Mr. Deakins: I would like to ask the Reporter to mark this document defendants' exhibit number 41 for identification.

(Document referred to is received as defendants' exhibit 41 for identification_

Q (By Mr. Deakins) Mrs. Williams, have you filed any document complaining of discrimination by Campbell Soup Company against you?

A Yes, I did.

Q How many times?

A One/

Mr. Finney: We will stipulate that defendants' exhibit number 41 for identification is a complaint of discrimination filed with the EEOC, signed by Maebell Williams, notarized by Willie G. Walker, dated October 5th, 1966.

Mr. Deakins: We will so stipulate.

Q (By Mr. Deakins) Now Mrs. Williams, you said that you had filed one charge against Campbell Soup Company complaining of discrimination. We have agreed here that defendants' exhibit number 41 is that charge. And I would like to show you that charge at this time. And we agree that your signature appears at the bottom of it. Where did you file that? Did the Government man come down here to Sumter to talk to you and you signed it?

A Yes, sir.

Q Did he ask you to raise your hand and swear what you were saying is trye and correct?

A No, sir.

Q Do you know of any white people that have been employed at Campbell Soup Company that have not been given the Wonderlic test or any other test that they required?

A I don't know.

Q I notice that you state in yourcharge that several whites were employed without being tested, as was required of negro applicants. Now do you have any information that leads you to believe that?

A I saw some went to work out there, and I know they didn't give them a test that morning. I heard them talking to them.

Q In other words you saw people going to work and they were not being given a test that particular time?

A That's right.

Q Do you have any information that those people were not tested at an earlier time?

A If they did, it would be before I got there that morning.

Q But you have no information that white people are working out there that have not taken the test?

A No, I don't.

Q Do you know of any negroes who have passed the Wonderlic test and have not been employed out there?

A Yes, I do.

A Who?

A It is a good many around me, but I don't know all of them by name.

Q That have passed the Wonderlic test?

A Down to the employment office.

Q No, I am not talking about the manual dexterity test down at the employment office. Do you know of anyone, any negro, who has taken the Wonderlic test who has not been employed by Campbell Soup Company?

A No.

Q All right, in your charge you state that negroes have passed the test and have not been employed.

A At that time there was.

Q Now you are taling about, what test are you talking about, the manual dexterity test?

A No, the Wonderlic test.

Q All right ~~wat~~ what negroes do you know that have passed the Wonderlic test that have not been employed?

A They hadn't pass it at that time, they went back and take it the second time.

Q They passed it?

A That's right.

Q And were they employed?

A That's right.

Q What are their names?

Q I don't know definite the names, but I know the last name.

Q Give me the last name.

A One of them is Brunson.

Q Is that a man or a woman?

A Woman.

A Is she a negro?

A Yes.

Q And you think she took the Wonderlic test twice?

A She had to take it twice, because she didn½t pass it the first time.

Q How do you know that, did she tell you?

A SHe told me she didn½t pass it, she was down there before I did.

Q And she told you she took it again and passed it?

A I don't know if she take it again, but I know she work, s he worked at Pioneer Dress Factory and later on she went back and went to work, she must have took it.

Q But you don't know that she took it twice?

A No, I don't.

Q But you know she told you she didnpt pass the Wonderlic test?

A That's right.

Q And you know she is working out there now?

A Yes.

Q And she is a negro?

A Yes, that's right.

Q All right, do you know anybody else?

A I don't know them by name, but I know them by me meeting them.

Q Do you know of anybodu that has passed the Wonderlic test that is not working out there?

A Not now.

Mr. Finney: Object to the question. Ithink the witness has answered it.

Q (By Mr. Deakins) You don't know of anybody?

A No.

Q You do know some people though, that you have heard did not pass the test that are working out there?

A They didn't pass it thefirst beginning.

Q Yes.

A They called them later.

Q All right, now Miss Brunson is one of those?

A Yes.

Q Do you know of anybody else?

A I kknow about seven head of them but I don't know them by name, just by me seeing them and talking to them.

Q And you know they failed the Wonderlic test?

A Yes, they failed.

Q And they are working out there?

A Yes, they working now.

Q And they are negroes?

A Yes.

Q And you don't know their names?

A No, I just know them by me working at the Pioneer Dress Factory.

Q How did you learn that they had failed the Wonderlic test?

A Well they was talking over it, talking about the Wonderlic test.

Q And they told you that?

A Yes.

Q Did they tell you where they had taken the Wonderlic test?

A Yes.

Q Where?

A Campbell Soup.

Q Through any other source did you learn that they had failed the Wonderlic test, besides them telling you?

A Some of them told me what they made or something like that. They didn't make the eleven score down there, and they, ~~they~~ the man said probably he would let them work at the dress factory, and he, later on he would call them back.

Q This is what these ladies told you?

A Yes, and they asked me did I pass and I told them no.

Q But did you ever hear from any other source other than these ladies themselves that they had not passed the Wonderlic test?

A Just different ones talking about it.

Q Who were the different ones?

A sometimes, meeting at the employment office, talking about how hard it was.

Q I am talking about other than the ladies who said they had flunked the Wonderlic test.

A No.

Q You didn't get any information from anybody else besides them that they had flunked the Wonderlic test?

A No.

Q Now Mrs. Williams, do you know of, do you have any information that Campbell Soup Company has ever checked any references on you?

A No, I don't.

Q You claim to have been discriminated against by Campbell Soup Company?

A Yes.

Q What do you base that on?

A Eighth grade level and our race and the Wonderlic test, and education.

Q How do you claim to have been discriminated against based on your race?

A Because more white hired down there ~~xx~~ than colored.

Q Anything else?

A No.

Q Do you feel that Campbell Soup Company has discriminated because there are not fifty percent colored and fifty percent white?

A Yes.

Q Andyou claim you have been discriminated against because of the Wonderlic test?

A Yes.

Q What do you base that on?

A Because it is above the eighth grade level education test.

Q Could you pass it with an eighth grade education?

A I don't believe so.

Q Anything else, you base your claim on the Wonderlic test?

A No.

Q And you, what do you base your claim that they have discriminated against you because of the eighth grade education?

A Well we know that we wouldn't pass it, if they put that test in there.

Q Now how many years of school have you completed?

A Eighth.

Q Now I notice on the application you filed in January, which is defendants' exhibit number 37, you showed ninth grade education.

A I did, but I didn't quite complete the nihth grade.

Q You had started the ninth grade but did not complete it?

A No.

Q You had finished the eighth grade?

A Yes.

Q Did you ever flunk any grades, or did you go up one grade every year?

A No, I went up a grade every year.

Q Now I noticke on Defendants' exhibit number 38, which is the application you filed on April 5th, you showed a tenth grade education.

A Yes, I went to two years of night school.

Q Between the time you filed your first application and the second application?

A I didn't finish, I finished after then.

Q After what?

A After I filed this one.

Q After you filed the first application you finished the night school course?

A Yes.

Q Well did they tell you you had completed the tenth grade by then?

A Well they didn't tell me but from the work they give us it was.

Q How do you know?

A For the work the teacher give us.

Q Well did any teacher tell you you were in the tenth grade?

A No, but the work was tenth grade wor,.

Q Mrs. Williams, I objained information by looking at Government files, that you had only completed the sixth grade. Do you know where the Government could have obeained such information?

Mr. Finney: I object to that line of questions, on the ground there is no foundation laid for it. That if the information is reliable we should have an opportunity to review the information before the witness is required to answer the question. In other words if you are relying on this information for impeachment purposes, we would know the source of it, where the original is, if he knows.

Mr. Deakins: I am referring to the investigation reporkt of the EEOC.

Mr. Finney: They won't show the investigation report, that is confidential.

Q (By Mr. Deakins) Do you know where the Government got information that you just went through the sixth grade?

A No, I don't.

Q Did you tell any Government representative you had been only through the sixth grade?

A He didn't ask me nothing like that.

Q Do you have any relatives working at Campbell Soup Company?

A No.

Q You know any people that work out there?

A A couple.

Q I thought you knew seven or eight people that told you they had passed and had been working out there.

A I don't know them by name.

Q I didn't ask by name, how many people do you know that work out there?

A I don't know them by name.

Q I am not asking you by name, but how many people do you know that work at Campbell Soup Company?

A I don't know but three right near me.

Q Three?

A Live near where I live.

Q That work out there?

A Yes.

Q Are they all negroes?

A Yes.

Q Have you ever had any relatives that have applied for a job at Campbell Soup Company?

A No, only my husband and son.

Q Did you work at Hill Furniture Company?

A Yes.

Q Is it correct that you were discharged there because your work was not satisfactory?

A No.

Q What were the circumstances of your leaving?

A Accuse me of stealing.

Q All right. What is your birthday?

A I just don't know, but Iguess, what I give when I married, 27th of September.

Q Is that the date you were born?

Mr. Finney: She says she did not know, but the date she used was September 27th.

Q (By Mr. Deakins) Do you know what year you were born?

A I don't, but I give my date they tell me, 1927.

Q How old are ~~xxx~~ you now?

A I think 39.

Q Have you ever been given any medical or physical examination by Campbell Soup Company?

A No.

Q Did you make that trip to Washington with the rest of them?

A No.

Mr. Deakins: No further questions.

EXAMINATION BY MR. FINNEY

Q Did you ever file an application at Campbell Soup Company through the employment office?

A Yes.

Q And that was the application introduced as defendants' exhibit number 37, dated January 11th, 1966?

A Yes.

Q And you left this at the employment office?

A Yes.

Q And you have not seen it until it was shown to you by counsel for Campbell Soup Company?

A Yes.

Q Between January 11th, the date of your first application, and April 5th, the date of your second application, did you hear anything from Campbell Soup Company, regarding your employment?

A No.

Q In these conversations you had with Mr. Partin, did he tell you that he would give you a job if you had passed the Wonderlic test, or you would be qualified for a job if you had passed the Wonderlic test, the first conversation you had with him?

A No.

Q Did he ever mention anything about the fact, in the first conversation, did he ever mention anything about the fact the Wonderlic test would keep you from getting a job?

A No, he didn't.

Mr. Deakins: Now, I beg your pardon?

Q (By Mr. Finney) Didn't he tell you you couldn't work out there unless you passed the Wonderlic?

A Not when I first talked to him.

Q But say between September and August, you talked to Mr. Partin?

A Yes.

Q Did he ever tell you during that period of time, if you passed the Wonderlic you would be eligible for work at Campbell Soup Company?

A Yes.

Q This letter you mentioned, who mentioned it first, you or Mr. Partin?
A Mr. Partin.
Q You didn't know he knew you had written a letter, did you?
A No.
Q You had started night school when, do you remember?
A I can't remember the date now.
Q Was it sometime before you made you, were you in night school when you applied to Campbell Soup the first time?
A Yes.
Q Were you attending night school?
A Yes.
Q Did Hill Furniture Company ever bring any criminal charges against you?
A No.
Q Have you ever been arrested or anything out of that?
A No.
Mr. Finney: No further questions.

EXAMINATION BY MR. DEAKINS

Q Now Mrs. Williams, after you took the Wonderlic test, you met with Mr. Partin?
A Yes.
Q And he told you you had not passed?
A Yes.
Q All right, and then did he tell you you couldn't get a

job there because you had not passed the Wonderlic test?

A Yes.

Mr. Deakins: No further questions.

Mr. Deakins: I would like to, if counsel is agreeable, to agree to substitute Xerox copies of the originals of all these exhibits.

Mr. Finney: Ithink we agreed to that. The question is whether you want to make the copies and send them back to me.

Mr. Deakins: I will be glad to make the copies.

Mr. Finney: That will be all right.

Mr. Deakins: I think we have agreed that after the depositions are typed up we will both review them, maybe we will have additional questions at that time.

Mr. Finney: Yes, and we would request at this time that those applications which were handled by the employment office, if you have a copy of those, M I understand that you have some of those, like Mrs. Williams', she said she handed hers in to the employment office.

Mr. Finney: The plaintiffs move that those names listed as plaintiffs on the original complaint, whose depositions were not taken during this hearing, be dismissed as plaintiffs. And it is stipulated and agreed that their names, that they are dismissed as of July 21st, 1967.

Mr. Deakins: We have no objection.

**DEPOSITIONS CLOSED SUBJECT TO REVIEW AS ABOVE INDICATED.**

KINGWOOD, IDELL, D. et.al. CAMPBELL SOUP CO. et.al. SUMTER, S CAROLINA 1967-1968
(JOB DISCRIMINATION)

Box 38
Folder 9

Society Of Wisconsin

Please Retain Original Order

Draft

TITLE
COURT

CIVIL ACTION
NO._____

## COMPLAINT

I. 1, this action in equity is brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e etc. and such stated sections give this Court jurisdiction of the matter, together with 1343(4) providing for injunctive relief, both preliminary and permanent, in a cause at action as alleged below.

II. Many persons of the Negro race have been denied rights under said title VII and accordingly Plaintiffs all members of the Negro race, have been denied or will be denied employment because of their race at the plant of Defendant located at and bring this action upon behalf of themselves and all other persons similiarly situated i.e. Negroes denied or who will be denied employment at the plant of the Defendant because of their race and color. There being common questions of law and fact affecting all other members of the class so described who have been or will be illegally discriminated against , all in violation of said Title VII of the Civil Rights Act of 1964 pursuant to Rules 23 (a) and (b) of the Federal Rules of Civil Procedure all such persons too numerous~~x~~ to be brought before this court are adequately represented by ~~px~~ plaintiffs, and for whom common relief is sought.

III. Plaintiffs seek injunctive relief against Defendant both preliminary and permanent, because of the maintenance of practices, customs wages, procedure , employment tests, standards and requirements maintained by Defendants herein which denied Plaintiffs and the other members of the class of employment together with all these terms rights priveleges and conditions thereof including but not limited to rates of compensation, vacation, sick pay vacation pay pension, social security senior rights and the like, all of which acts etc referred to are in violation of the said title VII.

IV. Plaintiffs

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are as are all members of the class they represent, Negro citizens of the U.S. and of South Carolina and have been denied employment at the plant of Defendant because of their race and color

V Defendants, upon information and belief is a corporation organized under the laws of the State of and maintains its main place of business, the manufacture of a variety of food products, canned and frozen, at Camden New Jersey. In or about the Swanson Division of said Defendant opened a plant in the vicinity of Sumter, South Carolina for the manufacture and production of various products of said Defendant which company is enagaged in interstate commerce and in an industry affecting commerce within the meaning of said Title ~~of said~~ U.S.C. 2000e et seq.

VI. In pursuance of the purposes set forth in V. above, Defendant hired offered to hire and sought employes for said new plant at but that the means and methods used, the polices pursued, the tests required, the standards put into practice, the local customs and upheld intended to and had the result of

~~discrimination~~

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~~discrimination~~x

discriminating and denied plaintiffs and the members of the class they represent, employment and all the benefits attendant therto as a result thereat.

VII. That amongst the various types of improper and illegal conduct referred to above were artificial educational standards for the skills required by defendants by unnecessary standards of health or application of so-called and intelligence tests designed to or which knowingly discriminate against Negroes in favor of white persons.

the knowing use of certain employment agency or agencies which delay, retard or ignore or otherwise improperly treat Negro~~s~~ applicants hiring whites applying subsequently to Negro applicants otherwise qualified and by other improper and discriminating application of employment procedures and practices.

VIII. The practices, procedures, conduct, the upholding of local discriminatory usages and customs above referred to were intended to cause, will have the effect of causing and were the result of an intent to cause discrimination because of the race and color of plaintiffs and that of the members of the class they represent, all in violation of and for this purpose of depriving them of rights accorded them under Title VII of the Civil Rights Act of 1964 U.S.C §2000(e) et seq.

IX.(a) The State of South Carolina, subdivision, whether county, city, town, or village and particularly County City have any law prohibiting any of the acts ~~of~~ or conduct prohibit~~ing~~ed by the said Title VII. 42 U.S.C. 2000 e)

(bl ~~They~~ That on or about October 4, 1966 the Plaintiffs caused the filing of a complaint alleging the violations of the ~~d~~ said VII 42 U.S.C. 2000 (e) referred to with the Equal Employment Opportunity Commission.

(cI) That on or December 6, 1966, Plaintiffs were advised by the said Commission that probable cause that Defendant have violated said Title VII;

(dl That no voluntary compliance by Defendants has taken place.

X. Plaintiffs and the class they represent, have no adequate remedy at law for redress wrongs set forth above that they will continue irreparable harm and pursuant to said Title VII this suit for preliminary and permanent injunctive relief to obtain fair and adequate relief which will be denied them as it has in the past, unless defendant practices rules, procedures and its upholding of local customs and usages are enjoined by this court and discontinued.

WHEREFORE:

1.PLAINTIFFS pray respectfully of this Court that the preliminary and permanent in finction be granted herein as requested and that a speedy hearing and trial of the issues herein be directed.

2. That Defendants, officers, attorneys its agents representatives, employees its successors and assigns agencies, persons, corporations or other charged with locating and referring potential employes to the siad Defendant at its plant near Sumter South Carolina be restrained and enjoined from maintaining continuing to maintain and practice rule procedure, test or standard or any custom or usage of the defendant the community or any larger area which denies withholds prevents in any limits the right to accept for employment Plaintiffs or any members of the class they represent because of their race or color, including but not limited to educational and/or psychological and/or achievements tests given for the purpose of or as the result of an intent to, or have caused discrimination, against plaintiffs because of their race or color and that

Defendants be further restrained and enjoined to maintain any practice or procedure rule or custom of treating Negro applicants for employment differentl from white applicants including but not limited to the order pf of consideration of applications, the

TITLE
COURT

CIVIL ACTION
NO.______

## COMPLAINT

I. X, this action in equity is brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e etc. and such stated sections give this Court jurisdiction of the matter, together with 1343(4) providing for injunctive relief, both preliminary and permanent, in a cause at action as alleged below.

II. Many persons of the Negro race have been denied rights under said title VII and accordingly Plaintiffs all members of the Negro race, have been denied or will be denied employment because of their race at the plant of Defendant located at and bring this action upon behalf of themselves and all other persons similiarly situated i.e. Negroes denied or who will be denied employment at the plant of the Defendant because of their race and color. There being common questions of law and fact affecting all other members of the class so described who have been or will be illegally discriminated against , all in violation of said Title VII of the Civil Rights Act of 1964 pursuant to Rules 23 (a) and (b) of the Federal Rules of Civil Procedure all such persons too numerousx to be brought before this court are adequately represented by px plaintiffs, and for whom common relief is sought.

III. Plaintiffs seek injunctive relief against Defendant both preliminary and permanent, because of the maintenance of practices, customs wages, procedure , employment tests, standards and requirements maintained by Defendants herein which denied Plaintiffs and the other members of the class of employment, together with ~~all~~ all ~~these~~ terms, rights, privileges and conditions thereof, including but not limited to, rates of compensation, vacation, sick pay, vacation pay, pension, social security senior rights and the like, all of which acts etc referred to are in violation of the said title VII.

IV. Plaintiffs

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are, as are all members of the class they represent, Negro citizens of the U.S. and of South Carolina and have been or will be denied employment at the Said Sumter plant of Defendant because of their race and color

V Defendant~~s~~ Campbell Soup Company Inc, upon information and belief is a corporation and Campbell Soup Company (Sumter Plant) organized under the laws of the State of New Jersey and maintains its main place of business, the manufacture of a variety of food products, canned and frozen, at Camden, New Jersey. In or about The summer of 1965 the Swanson Division of said Defendant began accepting applications prior to ~~opened~~ opening a plant in the vicinity of Sumter, South Carolina for the manufacture and production of various products of said Defendant, ~~which company~~ Defendant is enagaged in interstate commerce and in an industry affecting commerce within the meaning of said Title ~~of xxxdx~~ U.S.C. 2000e et seq.

Swanson Division

Inc upon information and belief

VI. In pursuance of the purposes set forth in V. above, Defendant hired, offered to hire and sought employes for said new plant at Sumter, South Carolina, but that the means and methods used, the policies pursuedm, the tests required, the standards put into practice, the local customs and wages upheld intended to and had the result of

~~dixxxixixxxixxxx~~

against Plaintiffs, and the members of the

discriminating and denied plaintiffs, and the members of the class they represent, employment and all the benefits attendant therto as a result there~~at~~of.

VII. That amongst the various types of improper and illegal conduct referred to above were artificially high educational standards for the skills required by defendants, ~~by~~ unnecessary standards of health or application of so-called ~~and~~ educational and intelligence tests designed to or which knowingly discriminate against Negroes in favor of white persons.

out ?

~~the knowing use of certain employment agency or agencies which delay, retard or ignore or otherwise improperly treat Negros applicants hiring whites applying subsequently to Negro applicants otherwise qualified and by other improper and discriminatoon application of employment procedures and practices.~~

various tests

VIII. The practices, procedures, conduct, the upholding of local discriminatory usages and customs above referred to were intended to cause, will have the effect of causing and were the result of an intent to cause discrimination because of the race and color of plaintiffs, and that of the members of the class they represent, all in violation of and for ~~this~~ the purpose of depriving them of rights accorded them under Title VII of the Civil Rights Act of 1964 U.S.C §2000(e) et seq.

IX. (a) Neither ~~The~~ the State of South Carolina, nor any subdivision, whether county, city, town, or village and more particularly Sumter County ~~City~~ City of Sumter have ~~any~~ its any law prohibiting any of the acts ~~of~~ or conduct prohibit~~ing~~ed by the said Title VII. 42 U.S.C§ 2000 (e)

(b) ~~They~~ That on or about October 4, 1966 the Plaintiffs cause~~s~~d the filing of a complaint alleging the violations of the ~~s~~ said Title VII 42 U.S.C. 2000 (e) referred to above with the Equal Employment Opportunity Commission.

(c) That on or December 6, 1966, ~~Plaintiffs were advised by~~ the said Commission issued a decision stating that probable cause that Defendants have

v. Upon information and belief Defendant Campbell Soup Company, Inc. is a corporation organized under the laws of the State of New Jersey and ~~owns all~~ owns the stock of Defendant Campbell Soup Company (Sumter plant), Inc. which is a corporation organized ~~the~~ under the laws of South Carolina; that the latter corporation in or about the summer of 1965, defendants or either of them began accepting employment applications prior to opening a plant in Sumter County, South Carolina for the manufacture and production of various food products of defendants; Defendants are engaged in interstate commerce and are in an industry affecting commerce within the meaning of said Title ~~VII~~ 42 §§ 2000 (e) et seq.

TITLE
COURT

CIVIL ACTION
NO._____

Company.
Campbell Soup. Inc
(~~Swanson Division~~)
Campbell Soup Company (Sumter Plant) Inc

## COMPLAINT

JURISDICTION

I. ~~I~~, this action in equity is brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e ~~etc~~ et seq and such stated sections give this Court jurisdiction of the matter, together with 28 U.S.C. § 1343(4) providing for injunctive relief, both preliminary and permanent, together with damages in money as set forth below in a cause at action as alleged below.

II. Plaintiffs, as well as Many persons of the Negro race have been denied rights under said title VII and accordingly Plaintiffs, all members of the Negro race, have been denied or will be denied employment because of their race at the plant of Defendant, located ~~at~~ in Sumter County, South Carolina and bring this action upon behalf of themselves and all other persons similiarly situated i.e. Negroes denied or who will be denied employment at the said Sumter plant of the Defendant because of their race and color. There being common questions of law and fact affecting all other members of the class so described who have been or will be illegally discriminated against, all in violation of said Title VII of the Civil Rights Act of 1964 pursuant to Rules 23 (a) and (b) of the Federal Rules of Civil Procedure, all such persons, too numerous to be brought before this court, are adequately represented by ~~px~~ plaintiffs, and for whom common relief is sought.

III. Plaintiffs seek injunctive relief against Defendants, both preliminary and permanent, because of the maintenance of practices, customs, ~~wages~~ usages, procedures, employment tests, standards and requirements maintained by Defendants herein which denied Plaintiffs and the other nature and kinds of tests and standards to be applied or the lack of such tests or standards and

4. That this Court retain jurisdiction of this cause of action for such reasonable time as may be necessary to enforce the provisions of 42 U.S.C. § 2000(e) et seq. as may be applicable herein and that the said Defendant a Defendants they ~~its~~ servants, agents, attorneys, employees and all firms, institutions, agencies corporations and ~~pe~~ persons who may be in concert with them or any way participate in the locating, training screening and hiring of persons as employees for Defendant be enjoined and restrained from instituting any psychological, educational health or other fitness standard test, whether oral or in writing unless they meet criteria determined by the said and ~~with~~ until this Court after notice to attorneys for Plaintiffs shall approve the same and that

Plaintiffs have such other relief as may be just and proper including reasonable attorney's fees, the expenses of this action and the costs herein.

E.E.O.C

Respectfully yours,

3. That Defendants or either of them be directed to hire plaintiffs and all members of the class discriminated against; that such persons ~~they~~ receive all sums of money they would have received if they had not been discriminated; that they be granted all rights of seniority from the date of such discrimination ~~and that they receive~~ including, but not limited to vacation rights, sick leave, pension, social security, unemployment insurance, workmen's compensation and;

(4)

that efforts at conciliation continued

violated said Title VII; the ~~said decision was received~~

until about February 13

(d) That no voluntary compliance by Defendants has taken place.

X. Plaintiffs and the class they represent, have no adequate remedy at law for redress of the wrongs set forth above; that they will continue to be irreparably harmed, ~~and~~ pursuant to said Title VII this suit for preliminary and permanent injunctive relief to obtain fair and adequate relief which will be denied them as it has in the past, unless defendant practices rules, procedures and its upholding of local customs and usages are enjoined by this court and discontinued.

**WHEREFORE:**

1. PLAINTIFFS pray respectfully of this Court that the preliminary and permanent ~~in finction~~ injunction be granted herein as requested and that a speedy hearing and trial of the issues herein be directed.

2. That Defendants, its officers, attorneys ~~its~~ agents representatives, employees, its successors and assigns and all agencies, persons, corporations or other persons charged with locating and referring potential employes to the said Defendant at its plant and all persons acting in concert with Defendants or either of them in ~~near~~ Sumter County, South Carolina, be restrained and enjoined from maintaining, from continuing to maintain any practice, rule, procedure, test or standard or any custom or usage of the defendant, the community where the plant is located, or any larger area which denies, withholds, prevents, or in any way limits the right ~~to accept for employment~~ to employment of Plaintiffs, or any members of the class they represent because of their race or color, including but not limited to educational and/or psychological and/or achievements tests given for the purpose of, or as the result of an intent to, or which have caused discrimination, against plaintiffs because of their race or color and ~~that~~

3. Defendants be further restrained and enjoined ~~to maintain~~ from maintaining any practice or procedure, rule or custom of treating Negro applicants for employment differently from white applicants including but not limited to the order ~~of~~ of consideration of applications, the

2nd Draft

CAMPBELL SOUP COMPANY, INC.

CAMPBELL SOUP COMPANY, (SUMTER PLANT) Inc.

COMPLAINT

1. JURISDICTION this action in equity is brought pursuant to Title XII of the Civil Rights Act of 1964, 42 U.S.C

§ 2000(e)

et seq. and such stated sections give this court jurisdiction of the matter, together with §§ 128 U.S.C. 1343 (4) providing for injunctive relief, both preliminary and permanent together with in money as set forth below in a cause at action as alleged below.

II. Plaintiffs as well as many persons of the Negro race have been denied rights under said Title VII and accordingly Plaintiffs, all members of the Negro race, have been denied or will be denied employment because of their race at the plant of Defendants located in Sumter, County, South Carolina and bring this action upon behalf of themselves and all other persons similiarly situated i.e. Negroes denied or who will be denied employment at said Sumter plant of the Defendant because of their race and color. There being common questions of law and fact affecting all other members of the class so described who have been or will be illegally discriminated against, all in violation of said Title VII of the Civil Rights Act of 1964 pursuant to Rules 23 (a) and (b) of the Federal Rules of Civil Procedure, all such persons, too numerous to be brought before this court and for whom common relief is sought, are adequately represented by ~~pp~~ plaintiffs,

III Plaintiffs seek injunctive relief against Defendants, both preliminary and permanent, because of the ~~maijx~~ maintenance of practices, customs, usages, procedures, employment tests, standards and requirements maintained by Defendants herein which denied Plaintiffs and the other members of the class of employment together with all terms, rights, privèleges and conditions thereof, including but not limited to rates, ~~privi~~ of compensation, vacation, sick pay, vacation pay, pension, social security, senior rights and the like, all of which acts etc. referred to are in violation of the said Title VII.

IV. Plaintiffs

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are, as are all members of the class they represent, Negro citizens of the U.S. and of South Carolina and have or will be denied employment at the said Sumter plant of Defendants because of their race and color.

V. Upon information and belief Defendant Campbell Soup Company, Inc. is a corporation organized under the laws of the State of New Jersey and owns the stock of Defendant Campbell Soup Company, (Sumter plant),North Carolina which is a corporation organized under the laws of South Carolina;that the latter corporation in or about the summer of 1965, defendants or either of them began accepting employment applications prior to opening a plant in Sumter County, South Carolina for the manufacture and production of various food~~s~~ products of defendants; Defendants are engaged in interstate commerce and are in an industry affecti commerce within the meaning of said Title 42 §§ 2000(e) et seq.

VI. In pursuance of the purposes set forth in V. above, Defendants hired, offered to hire and sought employes for said new plant at Sumter, South Carolina, but that the means and metho used, the polices pursued, the tests required, the standards put into practice, the local customs and usages upheld intended to and had the result of discriminating/and denied Plaintiffs ~~against Plaintiffs,~~ and the members of the class they represent, employment and all benefits attendant thereto as a result thereof.

VII. That amongst the various types of improper and illegal conduct referred to above by defendants, unnecessary standards of health,or application of so-called educational and intelligence tests designed to or which knowingly discriminate against Negroes in favor of white persons

VIII. The practices, procedures, various tests the upholding of local discriminatory usages and customs above referred to were intended to cause, will have the effect of causing and were the result of an intent to cause discrimination because of race and color of Plaintiffs, and that of the members of the class they represent, all in violation of and for the purpose of depriving them of rights accorded them under Title VII of the Civil Rights Act of 1964 U.S.C. § 2000(e) et seq.

IX. (a) Neither the State of South Carolina, nor any subdivision, whether county, city, town or village and more particularly

Sumter County, City of Sumter have any law prohibiting any of the acts or conduct prohibited by the said Title VII.42 U.S.C. § 2000 (e)

(bI That on or about October 4, 1966 the Plaintiffs caused the filing of a complaint alleging the violations of the said Title VII 42 U.S.C. 2000 (e) referred to above with the Equal Employment Opportunity Commission.

(cI) That on or December 6, 1966, the said Commission issued ~~that~~ a decision atating that probable cause existed and that Defendants have violated said Title VII that efforts at conciliation continued on or until about February 13

M. dI That no voluntary ~~so~~ compliance by Defendants has taken place.

X. Plaintiffs and the class they represent, have no adequate remedy at law for redress of the wrongs set forth above; that they will continue to be irreparably harmed pursuant to said Title VII this suit for preliminary and permanent injunctive relief to obtain fair and adequate relief which will be denied them as it has in the past, unless defendant practices rules, procedures and its upholding of local customs and usages are enjoined by this court and discontinued.

**WHEREFORE:**

1. PLAINTIFFS pray respectfully of this Court that the ~~pla~~ preliminary and permanent injunction be granted herein as requested an that a speedy hearing and trial of the issues herein be directed.

2. That Defendants, its officers, attorneys and all agents, representatives, employees its successors and assigns agencies, ~~representatives employees, its~~ persons, corporations or other persons charged with locating and referring potential employes to the said Defendants at its plants and all persons acting in concert with Defendants or either of them in Sumter County, South Carolina be restrained a and enjoined from maintaining, from continuing to maintain and practice, rule, procedure, test or standard or any custom or usage of the defendant, the community where the plant is located or any larger area which denies, withholds, prevents or in any way limits the right to employment of Plaintiffs,or any members of the class they represent because of their race or color, i s including but not limited to educational and/or psychological and/or achiebements tests given for the purpose of, or as the

result of an intent to, or which caused discrimination against plaintiffs because of their race or color and that

3. Defendants be further restrained and enjoined from maintaining any practice or procedure, rule or custom of treating Negro applicants for employment differently from white applicants including but not limited to the order of consideration of applications, the nature and kinds of tests and standards to be applied or the lack of such tests or standards and

4. That Defendants or either of them be directed to hire Plaintiffs and all members of the class discriminated against;such persons receive all sums of money they would have received if they had not been discriminated;that they be granted all rights of seniority from the # date of such discrimination including but not limited to vacation rights, sick leave, pension, social security, workmens compensation, unemployment insurance and;

5. That this court retain jurisdiction of this cause of action for such reasonable time as may be necessary to enforce the provisions of 42 U.S.C. § 2000 (e) et seq. as may be applicable herein and that the said Defendant or Defendantsm

servants, agents, attorneys, ~~herein and that said~~ employees and all firms, institutions, agencies corporations and persons who may be in concert with them or any way participate in the locating, training screening and hiring of persons as employees for Defendants be enjoined and r restrained from insitfuting any psychological, educational health or other fitness standard test, whether oral or in writing unless they meet criteria determined with said attorneys for Plaintiffs shall approve the same and that

Plaintiffs have such other relief as may be just and proper including reasonable attorney!sfees, the expenses of this action and the costs herein

Respectfully yours,

Campbell Soup

DRAFT

Roger May
1904
Philadelphia
Nat'l Bank

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IDell Kingwood,
SUSIE BRACEY, SILAS WALKER,
ANNIE MAE GOING, FRIZEAL
GREEN, GLADYS ROMEO, ~~IDELL D.~~
~~KINGWOOD,~~ SALLIE BURGESS,
MARGARET ELIZABETH WRIGHT,
PARALEE MCDOWELL, CATHERINE
PRESTON, CARRIE MAE DANEY,
ETHEL MAE BURGESS, ALICE
JACKSON, MARY BLANDING, HATTIE
MAE MCCOY, MAEBELL WILLIAMS,
VIRGINIA BURGESS, BEULAH RHODES,
GUSSI LEE MICKEL, JAMES F. PARHAM,
~~And~~ DELORIS BRAILSFORD, Robert E. White,
Maggie White

Plaintiffs,

CIVIL ACTION NO.________

VS.

COMPLAINT

CAMPBELL SOUP COMPANY, INC.,
A New Jersey Corporation, And
CAMPBELL SOUP COMPANY (SUMTER
PLANT), INC., A South Carolina
Corporation,

Defendants.

I

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1343(4) and 42 U.S.C. §2000e-5(f). This is a suit in equity authorized and instituted pursuant to Title VII of the Act of Congress known as "The Civil Rights Act of 1964." 42 U.S.C. §2000e et seq. Jurisdiction of this Court is invoked to secure the protection of and redress the deprivation of rights secured by 42 U.S.C. §§2000e et seq., providing for injunctive and other relief, including monetary damages, against racial discrimination in employment.

## II

Plaintiffs bring this action on their own behalf and on behalf of other persons similarly situated who have been, are, and will be seeking employment with defendants, Campbell Soup Company, Inc., (~~and~~ upon information and belief, its wholly owned subsidiary) Campbell Soup Company (Sumter Plant) Inc., at their facilities located in the State of South Carolina in the County of Sumter, South Carolina, pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure. There are common questions of law and fact affecting the rights of other Negroes in this class who are, have been, and will be illegally discriminated against in ways which deprive and tend to deprive them of equal employment opportunities and otherwise affect their status as prospective employees because of race and color. These persons are so numerous as to make it impracticable to bring them all before this Court. A common relief is sought. The interests of said class are adequately represented by plaintiffs.

## III

This is a proceeding for a preliminary and permanent injunction restraining defendant from maintaining a policy, practice, custom or usage of: (a) discriminating against plaintiffs and other Negro persons similarly situated because of race or color with respect to hiring terms, conditions and privileges of employment and (b) refusing to hire plaintiffs and other Negro persons similarly situated who have been, are, and will be seeking employment with defendants, the Campbell Soup Company, in ways which deprive plaintiffs and other Negro persons similarly situated of equal employment opportunities and otherwise adversely affect their status as applicants for employment and/or employees because of race and color.

IV

Each of the plaintiffs and all members of the class they represent are citizens and residents of the State of South Carolina and the United States of America.

V

Defendants Campbell Soup Company, Inc., a New Jersey Corporation, and Campbell Soup Company (Sumter Plant) Inc., a South Carolina Corporation, are, upon information and belief, corporations doing business in the State of South Carolina and the County of Sumter, South Carolina, for the purpose of processing poultry and other foods for frozen and canned food products. The Company is an employer within the meaning of 42 U.S.C. §2000e-(b) in that defendants are engaged in interstate commerce and in an industry affecting commerce and employs more than one hundred (100) persons.

VI

A. Defendants opened the defendants' Sumter Plant in South Carolina in the summer of 1966. Plaintiffs believe and allege that the majority of jobs available at defendants' Sumter Plant fall into the category of unskilled work involving the dressing, cooking and packaging of poultry and other foods. Plaintiffs further believe and allege that most of the employees presently employed at the ~~Swanson Division~~ Sumter Plant were referred to the Company by the South Carolina Employment Security Commission.

B. Plaintiffs believe and allege that the defendants instituted a test administered by Personnel Officers approximately one month after defendants began hiring employees for said Sumter Plant. The said test administered by the defendant is a test administered in addition to a finger and manual dexterity test, commonly known as GATB, taken by employees and prospective employees administered by the South Carolina Employment Security Commission.

VII

In pursuance of the purposes set forth above, defendants hired, offered to hire, and sought employees for said new plant at Sumter, South Carolina, but that the means and methods used, the policies pursued, the tests required, the standards put into practice, the failure to follow the 1966 Guidlines of the Equal Employment Opportunity Commission, the local customs and usages upheld were intended to and had the result of discriminating against plaintiffs and the class they represent and denying plaintiffs, and the members of the class they represent, employment and all benefits attendant thereto as a result thereof.

VIII

A. The tests and educational qualifications required and/or administered by defendant were designed, intended, and used for the purpose of discriminating against Negro applicants for employment at defendants' ~~Swanson~~ Sumter ~~Division,~~ Plant all in violation of the provisions of Title VII of the Civil Rights Act of 1964.

B. The tests and educational qualifications discriminated against Negroes in that substantially more Negroes than Whites were refused employment allegedly because they failed the test or could not meet the said educational qualifications.

C. The said test is not a valid test within the meaning of §703(h) of the Civil Rights Act of 1964 in that the defendant employer instituted the test without any evidence that the test performance bears any relationship to job performance with respect to those jobs and other reasonably related jobs for which Negro persons had applied.

IX

The above practices, procedures, educational standards, tests, as well as the upholding of local discriminatory usages and customs, the failure to follow the said Guidelines above referred to were intended to cause, will have the effect of causing, and were the result of an intent to cause discrimination based upon the race and color of plaintiffs, and that of the members of the class they represent, all in violation of and for the purpose of depriving them of rights accorded them under Title VII of the Civil Rights Act of 1964 U.S.C. §2000(e) et seq.

X

From the commencement of hiring of applicants until on or about October 1, 1966, the plaintiffs herein and the members of their class applied for employment and were denied such because of the improper conduct of defendants as alleged above or because of said conduct of defendants, were led to a belief that it would be useless to apply for employment with said defendants and accordingly did not apply, although they fully desired to do so, and were otherwise qualified for the work to be done in defendants Sumter Plant.

XI

A. On or about October 4, 1966, almost all plaintiffs filed a complaint with the Equal Employment Opportunity Commission alleging a denial of their rights under Title VII of the Civl Rights Act of 1964 by defendant through the discriminatory manner in which the defendant screened prospective employees for employment at their Sumter Plant. Plaintiffs further alleged in their charge to the Equal Employment Opportunity Commission that some Negroes who had passed the test administered by the Company had not been employed whereas prospective White employees were hired without first having taken a test.

B. On December 6, 1966, the Commission made a decision on plaintiffs' charge, finding reasonable cause to believe that the defendants were in violation of the Act in that the Company failed to hire plaintiffs and other Negro persons similarly situated because of race by arbitrarily and discriminatorily setting educational standards that are not justified for the job sought as means of restricting the number of Negroes the defendant employs at the Sumter Plant, and further the Commission found that the defendants had limited the selection of prospective employees in a way that tends to deprive the plaintiffs and other Negro persons similarly situated of employment opportunities because of race by the discriminatory use of testing procedures which are not exempt by 42 U.S.C. §2000e-2(h). A copy of the Commission's decision is attached to the Complaint as Exhibit "A."

C. Pursuant to the regulations of the Commission, counsel for the plaintiffs wrote the Commission letters under dates of December 16, 1966, and January 9, 1967, requesting the Commission to advise plaintiffs' counsel of the status of the Complaints pending before the Commission inasmuch as more than sixty (60) days had passed since the filing of the Complaints, and there had been a finding of reasonable cause by the Commission.

D. By letter dated February 13, 1967, the Commission notified plaintiffs' counsel that the Commission had not achieved voluntary compliance by the defendants through conciliation as provided by Title VII of the Civil Rights Act of 1964 and that plaintiffs were entitled to initiate a civil action in the United States District Court.

E. Neither the State of South Carolina nor the County of Sumter have a law prohibiting the unlawful employment practices alleged herein.

XII

Plaintiffs and the class they represent have no plain, adequate, or complete remedy at law to redress the wrongs alleged herein and this suit for a preliminary and permanent injunction is their only means of securing adequate relief. Plaintiffs and the class they represent are now suffering and will continue to suffer irreparable injury from the defendants' policy, practice, customs and usages as set forth herein.

WHEREFORE, plaintiffs respectfully pray this Court to advance this case on the docket, order a speedy hearing at the earliest practicable date, cause this case to be in every way expedited and upon such hearing to:

1. Grant plaintiffs and the class they represent a preliminary and permanent injunction enjoining defendants Campbell Soup Company, Inc., and Campbell Soup Company (Sumter Plant) Inc., their agents, successors, employees, attorneys, and all those acting in concert with them at their direction from continuing to use any method of selecting, screening, or testing of applicants for employment which discriminates against plaintiffs and other Negro persons similarly situated on the basis of race and color in violation of Title VII of the Civil Rights Act of 1964.

2. Grant the plaintiffs and the class they represent a preliminary and permanent injunction enjoining defendants Campbell Soup Company, Inc., and Campbell Soup Company (Sumter Plant), Inc., their agents, successors, employees, attorneys, and those acting in concert with them and at their direction from continuing or maintaining any policy, practices, customs, or usages of denying, abridging, withholding, condit-

ioning, limiting or otherwise interfering with the right of the plaintiffs and others similarly situated to enjoy equal opportunity for employment, advancement or training for advancement at defendants' Swanson Division at secured by Title VII of "The Civil Rights Act of 1964." 42 U.S.C. §§2000e et seq.

3. This Court retain jurisdiction of this cause of action for such reasonable time as may be necessary to enforce the provisions of 42 U.S.C. §2000(e) et seq. as may be applicable herein, and that the said defendants or defendants' servants, agents, attorneys, employees and all firms, institutions, agencies, corporations, and persons who may be in concert with them or in any way participate in the locating, training, screening , hiring , and promotion of persons as employees for defendants be enjoined and restrained from instituting any psychological, educational, or other fitness standard test, whether oral, in writing, or both, unless such test meet criteria determined to be valid by Title VII of the said Civil Rights Act of 1964.

4. Order the defendants or either of them to hire plaintiffs and all members of the class discriminated against;

[1967, April 13]

ORIGINAL FILED
APR 13 1967
MILLER C. FOSTER, JR., CLERK

Micro-filmed

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

FILED
APR 13 1967
MILLER C. FOSTER, JR., CLERK

IDELL D. KINGWOOD, et al., )
Plaintiffs, )
-vs- ) CIVIL ACTION NO. 67-167
CAMPBELL SOUP COMPANY, INC., )
a New Jersey Corporation,
et al., )
Defendants. )

## ORDER

The defendant has propounded certain interrogatories to plaintiffs' Counsel in the above case. Plaintiffs request a reasonable extension of time within which to file objections and answers to the interrogatories. Upon consideration of the request,

IT IS ORDERED that the time within which plaintiffs may serve and file objections to the defendant's interrogatories be and the same is hereby extended to May 1, 1967.

IT IS FURTHER ORDERED that the time within which plaintiffs may serve and file answers to the defendant's interrogatories be and the same is hereby extended to May 12, 1967.

Robert W. Hemphill
UNITED STATES DISTRICT JUDGE

Columbia
April 13, 1967.

TRUE COPY
Test:
MILLER C. FOSTER, JR. CLERK
Ann Birch
By: Deputy Clerk

Work Sheet

[1967, June 29]

IN THE
UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IDELL D. KINGWOOD et al.,

Plaintiffs,

versus

CIVIL ACTION NO. 67-167

CAMPBELL SOUP COMPANY, INC.,
A New Jersey Corporation, et al.,

Defendants.

## INTERROGATORIES

TO: Campbell Soup Company (Sumter Plant) Sumter, South Carolina

PLEASE TAKE NOTICE that plaintiffs' demand, pursuant to Rule 33 of the Federal Rules of Civil Procedure, that defendant company answer, under oath, within fifthteen (15) days after the service hereof, the following written interrogatories, which written interrogatories relate to defendant's place of business in the County of Sumter, South Carolina, known as Campbell Soup Company (Sumter Plant), Inc., and after the answer to each of the following written interrogatories identify, separately and in a manner suitable for use as a description in a subpoena, all sources of information (whether documentary, human, or otherwise) and all records maintained by defendant company or any other person or organization upon which defendant company relied in answering the interrogatories or which pertain or relate to information called for by the interrogatories:

1. State whether or not the Campbell Soup Company (hereinafter referred to as "the company") is a corporation organized and existing by virtue of the laws of the State of South Carolina.

2. Describe generally the type of business carried on by the company.

3. State the relationship between the company and Campbell Soup Company, Inc., Camden, New Jersey.

objection #1

4. State whether any of the work done by the company is pursuant to a contract with any department of the United States Government.

objection #1

5. State whether or not the company performs any sub-contracts through its parent company with any agency of the United States Government.

6. State the date when the company opened its Sumter Plant.

objection #2

7. State the number of persons employed by the company as of September 1, 1966, January 1, 1967, April 1, 1967, and June 1, 1967.

8. State the number of Negro persons employed by the company as of September 1, 1966, January 1, 1967, April 1, 1967, and June 1, 1967.

obj #3

9. State whether the employees of the company are classified and/or paid according to the job performed. If the answer to either of these is "yes", list all department job classification within each department, and if no departments then list all the various classification or categories that [redacted] by the company in making work assignments for its employees.

obj #4

10. List the name of each Negro, currently employed by the company and indicate with the respect to each such person the length of time so employed, initial job classification, and the number of wage increases during said employment, and the number of times transferred to a higher job classification during said employment.

11. List the name of each White person currently employed by the company and indicate with respect to each such person the length of time so employed, initial job classification,

obj #2

obj #4 cont'd

and the number of wage increases during said employment, and the number of times transferred to a higher job classification during said employment.

12. List the total number of Negroes which have at any time since the opening of the plant been employed by the company.

13. List the total number of White persons which have at any time since the opening of the plant been employed by the company.

14. State whether or not defendant company maintains customs, policies, or practices of not hiring Negroes in certain of its job classifications.

15. State whether or not defendant company maintains customs, policies, or practices of not hiring White persons in certain of its job classifications.

Objections #2

obj #3

16. State with respect to each job classification listed in response to Interrogatory No. 9 , the number of Negroes who are foremen, assistant foremen, supervisors, and inspectors.

17. State with respect to each job classification listed in response to Interrogatory No. 9, the number of White persons who are foremen, assistant foremen, supervisors, and inspectors.

obj #4

18. With respect to each job classification listed in response to Interrogatory No. 9 , state the average salary or hourly wage for workers employed therein on the last day of May, 1967.

obj #2

19. State the number of Negroes who applied for jobs at the company between January 1, 1965 and May 1, 1967.

20. State the total number of applicants enumerated in response to Interrogatory No. 19 that were hired by the company.

21. State the total number of applicants for jobs at the company between January 1, 1965 and May 1, 1967.

22. State the number of applicants enumerated in response to Interrogatory No. 21 that were hired by the company.

23. State the name and number of job vacancies within each job classification listed in response to Interrogatory No. 9 (including vacancies to be filled by both existing employees and new hirees) between January 1, 1965, and May 1, 1967.

obj #4

24. List the number and names of Negroes hired for or transferred to job vacancies listed in response to Interrogatory No. 22 between January 1, 1965, and May 1, 1967.

25. List the number and names of White persons who have made application for job vacancies listed in response to Interrogatory No. 22 between January 1, 1965, and May 1, 1967.

26. State whether any Negro workers are given job classifications having different titles from the job classifications of any White workers performing essentially the same duties as such Negro workers. If so, indicate the classifications involved, the number of Negroes or Whites in each such classification, state the salary or hourly rate of pay with respect to each classification, and state the reason for different classifications, for workers performing essentially the same duties.

obj #2

27. Of the various job classifications listed in response to Interrogatory No. 9, list those which come within the general category "craftsman" or "skilled."

obj #3

28. List the number of Negroes employed as craftsmen or skilled workers on the dates called for in Interrogatory No. 4.

29. List the number of White persons employed as craftsmen or skilled workers on the dates called for in Interrogatory No. 4.

obj #4

30. Since January 1, 1965, how many of the company's White craftsmen or skilled workers, if any, have been trained or are in training by the company.

obj #4 cont'd

31. Since January 1, 1965, how many Negroes, if any, have been trained or are in training as craftsmen or skilled workers by the company.

obj #2

32. List the names of Negroes employed since January 1, 1965, and list their starting wages.

33. List the names of all Whites employed since January 1, 1965, and list their starting wages.

34. State the average hourly wage or salary of all White employees of the company as of the last day of May, 1967.

35. State in detail the training and educational opportunities made available to any and all employees of the company.

36. What objective standards, if any, does the company have in its promotional system.

37. Does seniority play a part in the opportunity for promotion or advancement.

obj #2 + 3

38. State the number of Negroes employed as office workers and indicate the job classification of such negro office workers.

obj # 4

39. Since January 1, 1965, list the names of Negroes who have been given or are being given on-the-job training and with respect to each such person the job classification for which he was or is being trained.

obj #5

40. State whether a representative of the Equal Employment Opportunity Commission has attempted to conciliate the formal charges asserted against the company by the plaintiffs.

41. If the answer to Interrogatory No. 40 is "yes", state any agreements, adjustments, or charges resulting from conciliation efforts.

42. State whether you have received any notices, posters, bulletins, or other documents from the Equal Employment Opportunity Commission with instructions to post them in conspicuous places on the premises of your plant.

obj #5 Contd

43. If the answer to Interrogatory No. 42 is "yes", state where and when such notices, posters, bulletins or documents were posted and if the same are posted at the present time.

44. When and how was Sumter, South Carolina, selected as a plant site?

45. What other communities were under consideration for the site of the Sumter Plant?

46. Who are the persons responsible for the selection of the site?

47. Was an agency, public or private, used in the search for and selection of the plant site? If the answer is "yes", what agency and who were the persons involved?

48. Were reports prepared on Sumter and other plant sites under consideration? If the answer is "yes", who prepared these reports?

49. To what extent did the labor market consideration enter the plant selection processes?

50. Who prepared the labor market report on the Sumter labor market?

51. When was the first labor market report on Sumter prepared?

obj #6

52. Did the labor market reports, prior to the final selection of Sumter as a plant site, describe the various labor markets by race, sex, educational skills, unemployment ratio and the extent of unionization around each potential plant site?

53. Would you, without motion to produce, submit all reports, memoranda, correspondence, and other documents developed during the plant selection process that deal with the labor market conditions of the potential plant sites?

54. Did the company make an evaluation of the labor market reports. If the answer is "yes", would you attach copies of the evaluation.

Manpower availability

55. What labor market factors were considered in chosing Sumter as a plant site?

56. After Sumter was selected as a plant site, what additional labor market studies were undertaken.

57. If the answer to Interrogatory No. 56 is "yes", when were these additional labor market studies made?

58. By whom were these additional Sumter labor market studies undertaken?

59. Would you, without motion to produce, attach a copy of these additional labor market studies.

60. When did the first person responsible for company personnel practices appear in Sumter.

61. Who was the personnel referred to in Interrogatory No. 60?

62. What is his training and experience in the area of personnel work?

63. When was the first person responsible for staffing of the Sumter plant permanently assigned or physically present in Sumter?

64. Prior to the hiring or selection of potential employees, did the company personnel representive apprise himself [illegible] the labor market conditions of Sumter?

65. Was the appraisal of the labor market in Sumter reduced to writing in any form?

66. If the answer to Interrogatory No. 65 is "yes", would you attach a copy of this appraisal without a motion to produce.

67. What policies, and personnel procedures, of Campbell Soup Company, Inc., Camden, New Jersey, relating to personnel matters were transmitted to Sumter for implementation.

68. What personnel-selection criteria were implemented in Sumter?

69. What tests were used by the company and its Sumter Plant as a criteria for prospective employees?

70. Describe the purpose of each of the tests mentioned in the answer to Interrogatory No. 69.

obj #4

71. What has been the policy of this defendant company with regard to personnel testing since their hiring?

72. Has there been any modification or changes in this policy since its inception? If so, please explain.

73. Under what circumstances does the company use the Wonderlic Test?

74. Does the company use the Wonderlic Test for the purpose of selecting service, unskilled, and semi-skilled workers in Sumter?

75. Who selected the Wonderlic Test for use in Sumter?

76. Were any preliminary studies of the Wonderlic Test made before it was selected as a criteria for employment?

77. If the answer to Interrogatory No. 76 is "yes", would you describe these studies and furnish, without a motion to produce, a copy of the studies.

78. Who are the company personnel who have administered the Wonderlic Test?

79. Give the training and qualifications of persons mentioned in Interrogatory No. 78.

80. What guides were used in the administration of the Wonderlic Test.

81. What efforts were made to validate the Wonderlic Test in the Sumter area labor market or in the plant before its use as an employment criteria.

82. What efforts were made to validate the Wonderlic Test in the Sumter area labor market or in the plant after its use as an employment criteria.

83. Was a job analysis made for service, unskilled, and semi-skilled jobs in Sumter?

84. If the answer to Interrogatory No. 83 is "yes", would you attach, without a motion to produce, a copy of this analysis.

85. If a job analysis was made, what critical job factors were identified in these occupations?

86. What human abilities does the company purport to measure by the Wonderlic Test.

87. Are these purportedly measured abilities related to the critical job factors in the service, unskilled, and semi-skilled occupations of the company?

88. What validity studies were carried out to assure the relatedness of the test scores to the critical job traits.

89. How does the company use the Wonderlic Test?

90. Do you believe that the test scores on the Wonderlic Test are descriptive of individuals?

91. If the answer to Interrogatory No. 90 is "yes", describe the reasons for your conclusions.

92. If the answer to Interrogatory 90 is "yes", in what manner do these scores describe an individual?

93. What significance do you place on the test scores on the Wonderlic Test?

94. Do you use the Wonderlic Personnel Test to predict job performance, job stability, trainability, promotional ability, or other employee traits?

95. How do you assess the predictability in using the Wonderlic Test?

96. What testing service or agency does the company use in the establishment or evaluation of the Wonderlic Test?

obj #2

97. Are there any persons now employed by the company who did not meet the standards set by the company on the Wonderlic Test? If so, would you give their names, the category of their jobs, and the date of their employment.

98. Are there any persons now employed by your company who have not taken the Wonderlic Test?

99. Have you consistently used the same form of the Wonderlic Test?

100. If not, did you adjust scores to equate the different forms of the Wonderlic Test?

101. How and when did you arrive at a cutting score of 11 on the Wonderlic Test?

102. Did you consistently use the first page of the test form on applicants taking the test?

obj#3

103. Were there any validity studies made to determine the relationship between education and job performance in the service, unskilled, and semi-skilled occupations of the company? If so, would you attach, without a motion to produce, a copy of such studies.

104. How is education related to the occupations in the service, unskilled, and semi-skilled job categories in your company?

105. What are the educational standards used by the company with respect to service, unskilled, and semi-skilled jobs?

obj#7

106. When did you become aware of the educational differences between white and Negro workers in the labor force in Sumter?

107. Does your educational appraisal take into account the quality of schools providing the education?

obj#2

108. Has the company now in its employ any persons who do not meet the educational requirements established by the company? If so, would you give their names, the category of their jobs, and the dates of their employment.

109. To what degree and in what manner is formal education an important prerequisite for employment in the service, unskilled, and semi-skilled jobs with your company?

110. On what dates did you correlate job success and formal education at the Sumter Plant?

111. How was this correlation established?

112. Would you attach, without a motion to produce, a copy of these correlation studies.

obj # 8

113. Were any validation studies made of the relationship between education and job performance in the job categories at the Sumter Plant? If so, would you attach a copy of such studies without a motion to produce.

114. Did you make a study of the quality of the schools in the Sumter area? If so, please attach, without a motion to produce, a copy of this study.

115. State what the relationship between the company and the Sumter Chamber of Commerce has been since the company began to look into Sumter as a possible site for the plant.

116. State what the relationship, if any, was between the company and the Sumter Chamber of Commerce in the area of reference checks or employment practices.

117. If you would, without a motion to produce, attach a copy of any correspondence or agreements or other data between the company and the Sumter Chamber of Commerce.

These interrogatories are continuing in character, so as to require you to file supplemental answers if you obtain further or different information before trial.

Dated at Sumter, South Carolina this 29th day of June, 1967.

FINNEY & GRAY, ATTORNEYS

16½ West Liberty Street
Sumter, South Carolina

Ernest A. Finney, Jr.

1107½ Washington Street
Columbia, South Carolina

Matthew J. Perry

150 Nassau Street
New York, New York

Carl Rachlin
Attorneys For Plaintiffs

[1967, July 11]

Micro-filmed

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

FILED
JUL 11 1967
MILLER C. FOSTER, JR., CLERK

IDELL D. KINGWOOD, ET AL.,

Plaintiffs,

v.

CAMPBELL SOUP COMPANY, INC.,
A New Jersey Corporation, et al.,

Defendants.

CIVIL ACTION NO. 67-167

## ORDER

The Plaintiffs have propounded certain interrogatories to the Defendant Campbell Soup Company (Sumter Plant) Inc. in the above entitled and numbered cause. The Defendant Campbell Soup Company (Sumter Plant) Inc. has moved for a reasonable extension of time within which to file objections and answers to said interrogatories. Upon consideration of the request, and for good cause shown,

IT IS ORDERED that the time within which the Defendant Campbell Soup Company (Sumter Plant) Inc. may serve and file objections to the Plaintiffs' interrogatories be and the same is hereby extended to August 14, 1967.

IT IS FURTHER ORDERED that the time within which the Defendant Campbell Soup Company (Sumter Plant) Inc. may serve and file answers to the Plaintiffs' interrogatories be and the same is hereby extended to August 18, 1967.

IT IS FURTHER ORDERED that the time for completing discovery be and the same is hereby extended to September 5, 1967.

Done and entered this 11 day of July, 1967.

Robert W. Hemphill
United States District Judge

Columbia SC

[1967, August 14]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IDELL D. KINGWOOD, et al.,

Plaintiffs,

v.

CAMPBELL SOUP COMPANY, INC.,
A New Jersey Corporation, et al.,

Defendants.

CIVIL ACTION NO. 67-167

## CERTIFICATE OF SERVICE

It is certified that copies of the foregoing Objections to Plaintiffs' Interrogatories and Notice of Hearing on Objections to Interrogatories have been served upon Ernest A. Finney, Jr., Esq., 16 1/2 West Liberty Street, Sumter, South Carolina, Matthew J. Perry, Esq., 1107 1/2 Washington Street, Columbia, South Carolina, and Carl Rachlin, Esq., 150 Nassau Street, New York, N. Y., Attorneys for the Plaintiffs, by mailing copies to them through the United States Mail, postage prepaid.

Dated this 14th day of August, 1967.

The Daniel Building
Greenville, South Carolina

Robert T. Thompson
Robert T. Thompson

[1967, August 14]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IDELL D. KINGWOOD, et al.,

Plaintiffs,

v.

CAMPBELL SOUP COMPANY, INC.,
A New Jersey Corporation, et al.,

Defendants.

CIVIL ACTION NO. 67-167

NOTICE OF HEARING ON OBJECTIONS TO INTERROGATORIES

To: Ernest A. Finney, Jr., Esq.
16 1/2 West Liberty Street
Sumter, South Carolina

Matthew J. Perry, Esq.
1107 1/2 Washington Street
Columbia, South Carolina

Carl Rachlin, Esq.
150 Nassau Street
New York, N. Y.

Attorneys for Plaintiffs

Please take notice that the undersigned will bring the annexed objections on for hearing before this Court at the United States District Court Room in the United States Court House, Columbia, South Carolina, on the 18th day of September, 1967, at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

Dated this 14th day of August, 1967.

THOMPSON, OGLETREE & HAYNSWORTH

Robert T. Thompson

Robert T. Thompson
Attorney for Defendant Campbell
Soup Company (Sumter Plant) Inc.

The Daniel Building
Greenville, South Carolina

[1967, August 14]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IDELL D. KINGWOOD, et al.,

Plaintiffs,

v.

CAMPBELL SOUP COMPANY, INC.,
A New Jersey Corporation, et al.,

Defendants.

CIVIL ACTION NO. 67-167

**OBJECTIONS TO PLAINTIFFS' INTERROGATORIES**

Defendant Campbell Soup Company (Sumter Plant) Inc., hereinafter called this Defendant, objects to the following interrogatories heretofore served upon it by the Plaintiffs on the 3rd day of July, 1967, on the grounds stated:

1. Interrogatories Nos. 4 and 5, which inquire concerning the existence of contracts and subcontracts between this Defendant and the United States of America, on the ground that such matters are irrelevant. The Plaintiffs' alleged causes of action are based exclusively upon the provisions of 42 U.S.C. §2000e, hereinafter called the Civil Rights Act of 1964, and the application of such statutory provisions are not dependent in any manner upon the existence or non-existence of any contractual agreement between an employer and the United States of America.

2. Interrogatories Nos. 7, 8, 9, 10, 11, 12, 13, 16, 17, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 32, 33, 38, 39, 97 and 108, which inquire in various forms as to the names and numbers of Negro and other employees and applicants for employment, because:

   a. The matters inquired into are irrelevant under 42 U.S.C. §2000e-2(j).

b. The furnishing of such irrelevant information would be unduly burdensome and oppressive and would work an extreme hardship upon this Defendant.

c. The furnishing of names of employees and applicants for employment is confidential business information which this Defendant should not be required to disclose unless and until it becomes relevant to a pending issue.

3. Interrogatories Nos. 9, 16, 17, 28, 38, 103, 104 and 105, on the ground that the matters inquired into are irrelevant. As shown by the Plaintiffs' answers to this Defendant's interrogatories filed in this cause on the 9th day of June, 1967, the Plaintiffs' oral depositions taken on July 18 through 21, 1967, and the Plaintiffs' complaint herein, those Plaintiffs who have applied for employment with this Defendant have requested jobs in the manufacturing department or in the maintenance department and have not sought employment in any other departments or job classifications. Since these interrogatories request information concerning other departments and other job classifications, they request information which is irrelevant.

4. Interrogatories Nos. 10, 11, 18, 24, 25, 26, 30, 31, 32, 33, 34, 35, 36, 37, 39, 71 and 72, which inquire concerning various terms and conditions of employment of individuals who have been hired by this Defendant, on the ground that such matters are irrelevant. The Plaintiffs' causes of action are based solely upon alleged discrimination by this Defendant in failing to hire the Plaintiffs as employees and do not allege that this Defendant has discriminated in any manner as to the terms and conditions of employment of any individuals or groups who have been hired by this Defendant.

5. Interrogatories Nos. 40, 41, 42 and 43, which inquire concerning proceedings before the Equal Employment Opportunity Commission, on the ground that under 42 U.S.C. §2000e-5(a) nothing said or done during and as a part of any endeavors by the Equal Employment Opportunity Commission to conciliate or mediate any alleged unlawful employment practices may be made

public without the written consent of the parties, which has not been obtained in this cause, or used as evidence in any subsequent proceedings.

6. Interrogatory No. 52, which inquires whether labor market reports contain information as to the extent of unionization around each potential plant, on the ground that such a matter is irrelevant. The Plaintiffs' complaint only alleges discrimination based upon race under the Civil Rights Act of 1964 and does not involve any allegation covered by the National Labor Relations Act, as amended [28 U.S.C. §151 et seq.], which regulates employer-union activities.

7. Interrogatories Nos. 106 and 107, which inquire concerning alleged educational differences between white and Negro workers in the labor force in Sumter, South Carolina, on the ground that such inquiries assume facts not proven and on the additional ground that any such alleged educational differences are irrelevant to the issues in this proceeding.

8. Interrogatory No. 113, which inquires concerning validation studies made of the relationship between education and job performance in the job categories in the Sumter plant, on the ground that such a validation is irrelevant to the issues in this proceeding.

Dated this 14th day of August, 1967.

THOMPSON, OGLETREE & HAYNSWORTH

Robert T. Thompson

The Daniel Building
Greenville, South Carolina

Robert T. Thompson
Attorney for Campbell Soup Company
(Sumter Plant) Inc.

[1967, August]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IDELL D. KINGWOOD, et al.,

Plaintiffs,

versus CIVIL ACTION NO. 67-167

CAMPBELL SOUP COMPANY, INC.,
A New Jersey Corporation, et al.,

Defendants.

## O R D E R

The plaintiffs have propounded certain interrogatories to the defendants in the above-entitled and numbered cause, the defendant Campbell Soup Company (Sumter Plant), Inc., has moved for a reasonable extension of time in which to file objections and answers to said interrogatories. The Court for good cause shown granted this requested extension. At the time this requested extension was granted, the defendant requested an extension of time to complete discovery to September 5, 1967.

The plaintiff, based upon the voluminous nature of the record and the probable necessity to take further depositions, have now requested an extension of time for completing discovery to October 7, 1967. Upon consideration of the request, which is not objected to by defendant's attorneys, and for good cause shown;

IT IS ORDERED that the time for completing discovery be, and the same is hereby extended to October 7, 1967.

Done and entered this _____ day of August A.D., 1967.

United States District Judge
The District of South Carolina

Columbia, South Carolina

[1967, August 17]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

| | |
|---|---|
| IDELL D. KINGWOOD, et al.,<br>Plaintiffs,<br>v.<br>CAMPBELL SOUP COMPANY, INC., A New Jersey Corporation, et al.,<br>Defendants. | CIVIL ACTION NO. 67-167<br>ANSWERS TO PLAINTIFFS' INTERROGATORIES |

Campbell Soup Company (Sumter Plant) Inc., hereinafter called this Defendant, by Robert T. Thompson, its Attorney, answers the interrogatories served upon it by the Plaintiffs on July 3, 1967, as follows:

Interrogatory No. 1. This Defendant is a corporation organized and existing by virtue of the laws of the State of South Carolina.

Interrogatory No. 2. Processing poultry and frozen food products.

Interrogatory No. 3. This Defendant is a wholly owned subsidiary of Campbell Soup Company.

Interrogatory No. 6. Production operations were begun on or about June 20, 1966.

Interrogatory No. 14. No.

Interrogatory No. 15. No.

Interrogatory No. 44. About December, 1964, on the basis of comparing the Sumter plant site with other plant sites as to accessibility by rail or highway, availability of water supply, adequate waste disposal facilities, availability of adequate real estate, availability of adequate labor supply, local wage rates, taxes, available public utilities, climate, ground conditions, and similar factors.

Interrogatory No. 45. Numerous other communities were considered and visited in South Carolina and North Carolina, including Camden, Bennettville, Florence, Hartsville, Darlington, Greenville, Newberry, Columbia, and Bishopville, South Carolina; Smithville, Wilson, Goldsboro, Raeford, and Fayetteville, North Carolina.

Interrogatory No. 46. G. K. Budd, G. W. Crabtree, and W. B. Murphy, Camden, New Jersey.

Interrogatory No. 47. Yes. The Industrial Development Commissions of South Carolina and North Carolina.

Interrogatory No. 48. Yes. J. R. Hochreiner, Camden, New Jersey.

Interrogatory No. 49. Labor market consideration was one of numerous considerations, as enumerated above in answer to Interrogatory No. 44.

Interrogatory No. 50. Sumter Chamber of Commerce, Inc., and State Committee Technical Education, South Carolina Employment Security Commission.

Interrogatory No. 51. About May, 1964.

Interrogatory No. 53. No.

Interrogatory No. 54. No.

Interrogatory No. 55. Availability of qualified personnel and local wage rates and fringe benefits.

Interrogatory No. 56. None.

Interrogatory No. 57. Not applicable.

Interrogatory No. 58. Not applicable.

Interrogatory No. 59. Not applicable.

Interrogatory No. 60. On or about September 16, 1965.

Interrogatory No. 61. R. V. Gwozdz.

Interrogatory No. 62. B. S. Degree in Business Education from Bowling Green College, and fifteen years experience in personnel relations work with various employers and the United States Government.

Interrogatory No. 63. September 16, 1965.

Interrogatory No. 64. Only generally. He did not conduct any formal study.

Interrogatory No. 65. No.

Interrogatory No. 66. Does not apply.

Interrogatory No. 67. All.

Interrogatory No. 68. Prior to July 15, 1966, as to job classifications in the manufacturing department, applicants for employment were required to complete an application form and to pass a manual dexterity test and were appraised by an interviewer in the personnel department. Prospective employees were also subject to a screening report, including police check, credit check and personal reference check, and were required to pass a physical examination. On and after July 15, 1966, this Defendant added the requirements for job classifications in the manufacturing department that prospective employees must have completed an eighth grade education and obtain a gross score of 11 on the Wonderlic Personnel Test.

Prior to July 15, 1966, as to the maintenance department, the applicants were required to successfully complete a training school conducted by the South Carolina Technical Education Center, Special Schools Division, fill out an application form, be appraised by an interviewer in the personnel department, and pass a physical exmination. Applicants for maintenance jobs were also subject to a screening report, including police check, credit check and personal reference check. On and after July 15, 1966, as to job classifications in the maintenance department, the applicant was no longer required to complete the training school mentioned above, but in addition to the other requirements for hiring the applicant must have completed a tenth grade education, obtain a gross score of 15 on the Wonderlic Personnel Test, take the mechanical apprehension test, take a work drawing test, take a scale reading test, and take the revised Minnesota Paper Form Board Test.

Interrogatory No. 69. See answer to Interrogatory No. 68.

Interrogatory No. 70. To help ascertain the applicant's abilities and potentialities as an employee.

Interrogatory No. 73. As a factor in considering eligibility for employment.

Interrogatory No. 74. Yes.

Interrogatory No. 75. William E. Harwick, Vice President, Campbell Soup Company, Camden, New Jersey.

Interrogatory No. 76. No.

Interrogatory No. 77. Not applicable.

Interrogatory No. 78. R. V. Gwozdz, Wayne Partin, Ernest Allen, Dianne Hooper, and Isabella Thomas.

Interrogatory No. 79. R. V. Gwozdz has a B. S. Degree in Business Education, Wayne Partin has a B. S. Degree in Business Administration, Ernest Allen has a B. S. Degree in Industrial Psychology and Dianne Hooper has an A. B. Degree in Secretarial Science. All of the individuals administering the Wonderlic Personnel Test were familiarized with the procedures for administering the test.

Interrogatory No. 80. The Wonderlic Personnel Test Manual, published by E. F. Wonderlic, Post Office Box 7, Northfield, Illinois.

Interrogatory No. 83. No.

Interrogatory No. 84. Not applicable.

Interrogatory No. 85. Not applicable.

Interrogatory No. 86. General aptitude and intelligence, problem-solving ability, susceptibility to written communications, training and advancement, and job stability, on an objective basis, and corollated to educational level.

Interrogatory No. 87. Yes.

Interrogatory No. 88. None, in view of the extensive and successful use of this test by employers in various areas.

Interrogatory No. 89. In accordance with the instructions contained in the Wonderlic Personnel Test Manual.

Interrogatory No. 90. In part.

Interrogatory No. 91. Because of the extensive and successful use of this test by employers in various areas.

Interrogatory No. 92. See answer to Interrogatory No. 86 above.

Interrogatory No. 93. Passage of the test is one factor, among others, in determining eligibility for employment. It is also considered in cases of promotion and advancement.

Interrogatory No. 94. Yes.

Interrogatory No. 95. Practical.

Interrogatory No. 96. No.

Interrogatory No. 98. Yes.

Interrogatory No. 99. No.

Interrogatory No. 100. No adjustment was necessary to equate the different forms.

Interrogatory No. 101. By use of the Wonderlic Personnel Test Manual's recommended minimum score of 12 for general factory help - Grade B and the Manual's average score of 12.3 for an individual with an eighth grade education, and by reducing the recommended scores to a gross score of 11 points.

Interrogatory No. 102. Yes.

Interrogatory No. 109. It is one of several factors considered in determining eligibility for employment.

Interrogatory No. 110. No dates.

Interrogatory No. 111. Not applicable.

Interrogatory No. 112. Not applicable.

Interrogatory No. 114. No.

Interrogatory No. 115. This Defendant has been a member of the Sumter Chamber of Commerce since June 1967. This Defendant also used the Sumter Chamber of Commerce as a source of checking references on applicants for employment for a period of approximately two months in May and June 1966.

Interrogatory No. 116. This Defendant used the Sumter Chamber of Commerce as a source of checking references on applicants for employment for a period of approximately two months in May and June 1966, but no applicant for employment was rejected or prejudiced by such reference checks. This Defendant has no relationship with the Sumter Chamber of Commerce in the area of employment practices.

Interrogatory No. 117. No.

Dated this 17th day of August, 1967.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Personally appeared before me Robert T. Thompson, who first being duly sworn states that he is the attorney for Campbell Soup Company (Sumter Plant) Inc., one of the Defendants in the above entitled and numbered cause, that he is duly authorized to make the above and foregoing Answers to Plaintiffs' Interrogatories, that he has read said answers and is familiar therewith, and that to the best of his knowledge, information and beliefs said answers are true and correct.

Robert T. Thompson

Robert T. Thompson

Sworn to before me this
17th day of August, 1967.

Margaret V. Sloan

Notary Public for South Carolina

[1967, August 17]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

| | |
|---|---|
| IDELL D. KINGWOOD, et al.,<br>Plaintiffs,<br>v.<br>CAMPBELL SOUP COMPANY, INC., A New Jersey Corporation, et al.,<br>Defendants. | CIVIL ACTION NO. 67-167 |

## CERTIFICATE OF SERVICE

It is certified that copies of the foregoing Answers to Plaintiffs' Interrogatories have been served upon Ernest A. Finney, Jr., Esq., 16 1/2 West Liberty Street, Sumter, South Carolina, Matthew J. Perry, Esq., 1107 1/2 Washington Street, Columbia, South Carolina, and Carl Rachlin, Esq., 150 Nassau Street, New York, N. Y., Attorneys for the Plaintiffs, by mailing copies to them through the United States Mail, postage prepaid.

Dated this 17th day of August, 1967.

The Daniel Building
Greenville, South Carolina

Robert T. Thompson
Robert T. Thompson

[1967, August 17]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IDELL D. KINGWOOD, et al.,

Plaintiffs,

versus CIVIL ACTION NO. 67-167

CAMPBELL SOUP COMPANY, INC.,
A New Jersey Corporation, et al.,

Defendants.

## MOTION BY IDELL D. KINGWOOD, ET AL., FOR EXTENSION OF TIME TO COMPLETE DISCOVERY

To The Honorable Judge of Said Court:

Now comes the plaintiffs above-named and respectfully move for an extension of time to complete discovery herein. These plaintiffs show as follows:

1. By an Order dated July 11, 1967, the Honorable Robert W. Hemphill, United States District Judge for the District of South Carolina extended the time for the defendants to object to interrogatories to August 14, 1967, and the time by which the defendants were to answer the interrogatories to August 18, 1967.

2. Because of the fact that some of the parties necessary to complete the depositions are out of the state, and the voluminous nature of the litigation, these plaintiffs represent that they will be required to expend a substantial amount of time in studying the answers to the interrogatories and the objections thereto before dedding whether it will be necessary to take further depositions.

3. Based upon these facts, the plaintiffs represent that it will be necessary to further extend the time for completing discovery until October 7, 1967.

4. The granting of this extension of time will not delay the trial of this case.

5. The defendants' attorneys of record have no objection to the granting of this motion.

6. This motion is not filed for purposes of causing delay, but in order that justice may be done and to expedite the trial of this matter.

WHEREFORE, plaintiffs pray that the time for the completing of the discovery of this matter be extended to October 7, 1967.

Respectfully submitted,

FINNEY & GRAY, ATTORNEYS

BY: ______________________________
Ernest A. Finney, Jr.

August 17, 1967
Sumter, South Carolina

[1967, [illegible]ber

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IDELL D. KINGWOOD, et al.,

Plaintiffs,

v. CIVIL ACTION NO. 67-167

CAMPBELL SOUP COMPANY, INC.,
A New Jersey Corporation, et al.,

Defendants.

O R D E R

In the above-entitled matter the plaintiff have filed certain interrogatories, the defendants filed objections to these interrogatories, said objections being dated August 14, 1967. On September 22, 1967, a hearing was held before the Court on defendants' objections to the interrogatories.

As a result of this hearing and upon consideration of the facts and law as presented at this hearing, it is ORDERED:

1. As to objection No. 1, the position of the plaintiff is sustained, and the defendant is ordered to answer Interrogatories Nos. 4 and 5.

2. As to Objection No. 2, the position of the plaintiff is sustained and the defendant is ordered to answer Interrogatories Nos. 7, 8, 9, 10, 11, 12, 13, 16, 17, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 32, 33, 38, 39, 97, and 108.

3. As to Objection No. 3, the position of the plaintiff is sustained and the defendant is ordered to answer Interrogatories Nos. 9, 16, 17, 28, 38, 103, 104, and 105.

4. As to Objection No. 4, the position of the plaintiff is sustained and the defendant is ordered to answer Interrogatories Nos. 10, 11, 18, 24, 25, 26, 30, 31, 32, 33, 34, 35, 36, 37, 39, 71, and 72.

5. As to Objection No. 5, the position of the defendants is sustained and they shall not be required to answer

Interrogatories Nos. 40, 41, 42, and 43.

6. As to Objection No 6, the position of the plaintiff is sustained, except that as to Interrogatory No 52, the reference to unionization is stricken and the defendants will not be required to answer that portion of Interrogatory No. 52 dealing with unionization.

7. As to Objection No. 7, the position of the defendant is sustained, and they will not be required to answer Interrogatories Nos. 106 and 107.

8. As to Objection No. 8, the position of the plaintiff is sustained and the defendant is ordered to answer Interrogatory No. 113.

Due to the voluminous nature of the information required by answers to these interrogatories, it is Ordered that the defendants will have ninety days from the date of this Order in which to furnish the plaintiffs with the answers to the interrogatories; it is further

Ordered that the plaintiffs will have forty days from the date of the service of the answers to the interrogatories to complete all discovery in this matter.

Honorable Robert W. Hemphill
United States District Judge for
The Eastern District

Columbia, South Carolina

September _____, 1967.

[1967] [December?]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IDELL D. KINGWOOD, ET AL.,

Plaintiffs,

v.

CAMPBELL SOUP COMPANY, INC.,
A New Jersey Corporation, et al.,

Defendants.

CIVIL ACTION NO. 67-167

To the Honorable, The Judge of Said Court:

## MOTION FOR EXTENSION OF TIME TO ANSWER INTERROGATORIES AND TO COMPLETE DISCOVERY

Now comes Campbell Soup Company (Sumter Plant) Inc., one of the Defendants in the above entitled and numbered cause, and moves the Court to extend the time for filing answers to the Plaintiffs' interrogatories and to complete discovery. In support thereof, this Defendant shows as follows:

1. The answers to the Plaintiffs' interrogatories are currently due to be filed on or before December 26, 1967.

2. In order to adequately answer the said interrogatories, this Defendant has been required to conduct extensive investigations, and it is anticipated that upon completion of such investigations the answers to interrogatories will be voluminous. This Defendant is in the process of gathering the necessary information called for in the said interrogatories with all diligence, but represents that such information cannot be compiled before January 15, 1968.

3. The attorney for the Plaintiffs consents to the granting of this Motion.

4. This Motion is not filed for the purpose of causing delay, but in order that justice may be done.

WHEREFORE, this Defendant moves to extend the time for filing its answers to the Plaintiffs' interrogatories to January 15, 1968, and that the time for completing discovery be extended until forty (40) days thereafter.

Respectfully submitted,

THOMPSON, OGLETREE & HAYNSWORTH

Daniel Building
Greenville, S.C. 29601

By Robert T. Thompson
Robert T. Thompson

[1967, December]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IDELL D. KINGWOOD, ET AL.,

Plaintiffs,

v.

CAMPBELL SOUP COMPANY, INC.,
A New Jersey Corporation, et al.,

Defendants.

CIVIL ACTION NO. 67-167

## ORDER

The Plaintiffs have propounded certain interrogatories to the Defendant, Campbell Soup Company (Sumter Plant) Inc., in the above entitled and numbered cause. The Defendant, Campbell Soup Company (Sumter Plant) Inc., has moved for a reasonable extension of time within which to file answers to interrogatories. Upon consideration of the request, and for good cause shown,

IT IS ORDERED that the time within which the Defendant, Campbell Soup Company (Sumter Plant) Inc., may serve and file its answers to the Plaintiffs' interrogatories be and the same is hereby extended to January 15, 1968.

IT IS FURTHER ORDERED that the time for completing discovery be and the same is hereby extended until forty (40) days thereafter.

Done and entered this ______ day of December, 1967.

United States District Judge

[1968, January 15]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

| | |
|---|---|
| IDELL D. KINGWOOD, ET AL.,<br>Plaintiffs,<br>v.<br>CAMPBELL SOUP COMPANY, INC., A New Jersey Corporation, et al.,<br>Defendants. | CIVIL ACTION NO. 67-167<br>ANSWERS TO PLAINTIFFS' INTERROGATORIES |

Campbell Soup Company (Sumter Plant) Inc., hereinafter called this Defendant , by Robert T. Thompson, its Attorney, answers the interrogatories served upon it by the Plaintiffs on July 3, 1967, pursuant to the Order entered by the Court on September 27 , 1967, as follows:

Interrogatory No. 4. No.

Interrogatory No. 5. No.

Interrogatory No. 7. As of September 1, 1966, 840 hourly paid employees and 153 salaried employees; as of January 1, 1967, 1,267 hourly paid employees and 168 salaried employees; as of April 1, 1967, 1,308 hourly paid employees and 157 salaried employees; and as of June 1, 1967, 1,329 hourly paid employees and 146 salaried employees.

Interrogatory No. 8. This Defendant had no records during this period which indicate the race of employees. From visual observation only, it was estimated that as of September 1, 1966, there were 126 Negroes employed as hourly paid employees and 13 Negroes employed as salaried employees; as of January 1, 1967, there were 250 Negroes employed as hourly paid employees and 14 Negroes employed as salaried employees; as of April 1, 1967, there were

266 Negroes employed as hourly paid employees and 8 Negroes employed as salaried employees; and as of June 1, 1967, there were 270 Negroes employed as hourly paid employees and 9 Negroes employed as salaried employees.

Interrogatory No. 9. Employees are classified in accordance with the type of work they are performing and are paid the rate established for that classification. Class 1 Jobs include basic general laborer; Class 2 Jobs include saw operator, service attendant, bone pickup, break and service poultry, transport poultry tanks, prepare and mix soups, general plant labor, raw turkey boning line, pull chicken breasts-cutup line, pull and rehang legs-cutup line, floor sweeper operator (scrubber), remove crops and eviscera, lung gun operator, drawers, finished product handlers, defrost tank tagger, aluminum trays-inspect and pack, batter chicken parts, sort and tray parts from fryer, production inspector, and case frozen dinners; Class 3 Jobs include insert loaders, ice poultry, dump and defrost poultry, load poultry coops, hang live poultry, picker attendant, sift flour, cartoner operator, service fruit, equipment cleaners-night, dock workers, pickup live poultry, whip potatoes, dump and mix vegetables, mix butter and service, pack and manifest bulk products, wash poultry tanks or inserts, flour raw chicken, amerio freezer attendant, fat centrifuge operator, de-ice poultry and parts, hanging eviscerated turkeys; Class 4 Jobs include foil overlay operator, broth blender, dicing room attendant, mix batter, cook potatoes, forklift operator-receiving, small order accumulator-freezer, palletizer operator, forklift service-containers, killers, knife sharpener, chiller operator, fat system operator; Class 5 Jobs include vertical digester cook, horizontal digester operator, flotation operator, line attendant-defrost and inspection, line attendant-case and carton operations, disposal operator-offal system, vegetable peeler operator, overseer-sorting, dicing, and packing poultry, spice weigher, leader-raw turkey boning, picking room attendant; Class 6 Jobs include overseer-defrost area, line attendant-killing and dressing, evaporator operator, cook - A, forklift operator-freezer, truck drivers-poultry, continuous freezer operator, overseer-disposal systems and grounds upkeep, overseer-sorting, dicing, and packing poultry; Class 7 Jobs include fryer operator, checker-finished product shipping; and Class 8 Jobs include overseer-cookroom, warehouse overseer-shipping & receiving, overseer-turkey operations, Class E mechanic, Class D mechanic, Class C mechanic, Class B mechanic, Class A mechanic, and Class AA mechanic. The job classifications for weekly salaried employees are benefits assistant, guards, general clerks, inspectors, assistant supervisors, clerks, office trainees, line inspectors, senior clerks, nurses, secretaries, stenographers, factory accounting clerks, supervisors-payroll, sergeant-plant security, maintenance clerks, store keepers, technicians, cost control assistants, checkers, senior account clerks, junior account clerks, drafting detailers, and senior lead clerks. The job classifications for monthly salaried employees are chemists I, supervisors, purchasing agents, plant manager, managers, agricultural managers, area managers, assistant to technologists, resident engineer, technologists, industrial manager, senior purchasing agent, plant accountant, chemists II.

Interrogatory No. 10. As of October 1, 1967, this Defendant shows the following:

| Name | Date of Hire | Initial Job Classification | No. of Transfers To Higher Rated Classification |
|---|---|---|---|
| Abram, R. | 06/13/66 | 2 | 4 |
| Albert, P. | 02/20/67 | 2 | 1 |
| Allen, M. | 11/03/66 | 1 | None |
| Anderson, S. | 01/04/67 | 1 | 1 |
| Atkinson, A.M. | 12/19/66 | 1 | None |
| Atkinson, W. C. | 09/01/66 | 2 | 1 |
| Ballard, E. | 12/05/66 | 2 | None |
| Ballard, S. | 01/30/67 | 1 | None |
| Barnes, A. | 12/15/66 | 1 | None |
| Barno, C. | 01/09/67 | 1 | None |
| Barton, A. C. | 07/11/66 | 1 | None |
| Benbow, R. | 09/12/66 | 1 | None |
| Benjamin, C. | 01/09/67 | 1 | 1 |
| Benjamin, F. | 06/20/66 | 1 | None |
| Benjamin, J. | 05/24/67 | 2 | 1 |

| Name | Date of Hire | Initial Job Classification | No. of Transfers To Higher Rated Classification |
|---|---|---|---|
| Blanding, G. | 01/09/67 | 2 | 1 |
| Blyther, W. | 06/13/66 | 2 | 1 |
| Bracey, A. | 04/23/67 | 1 | None |
| Bradley, G. | 07/11/66 | 1 | None |
| Britton, H. | 12/19/66 | 2 | 1 |
| Brogdon, D. A. | 07/18/66 | 1 | 1 |
| Brooks, S. | 12/19/66 | 1 | 1 |
| Brown, A. | 08/24/66 | 2 | 1 |
| Brown, B. | 01/04/67 | 1 | None |
| Brown, D. M. | 08/24/66 | 1 | None |
| Brunson, A. M. | 03/14/67 | 1 | None |
| Brunson, B. | 11/07/66 | 1 | None |
| Brunson, E. | 12/05/66 | 1 | 1 |
| Brunson, S. | 09/26/66 | 1 | None |
| Brunson, V. | 11/02/66 | 1 | None |
| Budden, N. | 08/08/66 | 1 | None |
| Burgess, E. | 12/05/66 | 1 | 1 |
| Burgess, R. | 10/04/66 | 1 | 1 |
| Burns, E. | 09/15/66 | 1 | None |
| Burroughs, C. | 09/20/67 | 2 | 1 |
| Butler, A. | 06/27/66 | 2 | 4 |
| Byrd, A. | 09/15/66 | 1 | None |
| Canty, J. | 12/19/66 | 1 | 1 |
| Canty, R. | 07/25/66 | 2 | 3 |
| Canty, S. | 04/25/66 | Mechanic - Class C | 2 |
| Carroll, E. | 09/19/66 | 1 | None |
| Carter, E.J.B. | 12/27/66 | 1 | None |
| Chambers, V. | 06/02/67 | 1 | None |
| Champion, M.W. | 07/18/66 | Mechanic - Class C | 2 |
| Chatman, D. | 02/13/67 | 1 | None |
| Chatman, J. | 08/04/67 | 2 | None |
| Chestnut, C. | 12/20/66 | 1 | 1 |
| Choice, L. | 12/05/66 | 1 | None |
| Clark, E. G. | 07/11/66 | 1 | None |
| Clark, M. F. | 09/13/66 | 1 | None |
| Clea, L. | 09/20/67 | 1 | None |
| Clyburn, W. M. | 05/10/67 | 2 | 1 |
| Conyers, R. M. | 01/30/67 | 1 | None |
| Cooke, J. | 02/13/67 | 1 | None |
| Cooper, E. | 08/29/66 | 2 | 5 |
| Cooper, F. | 09/01/66 | 2 | 1 |
| Cooper, M. | 06/06/66 | 2 | 3 |
| Cooper, R. | 09/01/66 | 2 | 1 |
| Cousar, B. | 12/22/66 | 1 | 1 |
| Cousar, P. | 12/22/66 | 1 | None |
| Croskey, J. | 09/06/66 | 2 | 1 |
| Davis, A. | 07/10/67 | 1 | 1 |
| Davis, B. | 12/19/66 | 1 | 1 |
| Davis, M. | 12/19/66 | 1 | 1 |
| Davis, V. | 01/09/67 | 1 | None |
| Dawson, B. T. | 09/12/66 | 2 | 1 |
| Dawson, J. | 08/24/66 | 1 | None |

| Name | Date of Hire | Initial Job Classification | No. of Transfers To Higher Rated Classification |
|---|---|---|---|
| Dawson, L. | 07/11/66 | 1 | 1 |
| Dees, M. | 08/22/66 | 1 | None |
| Dennis, J. | 07/11/66 | 2 | 1 |
| Dicks, A. | 12/05/66 | 1 | 1 |
| Dinkins, C. | 10/05/66 | 1 | None |
| Dinkins, E. | 12/05/66 | 1 | 1 |
| Dixon, E. | 01/30/67 | 1 | None |
| Drayton, L. E. | 12/05/66 | 1 | None |
| Dukes, H. | 06/23/66 | 2 | 1 |
| Dupree, S. | 01/09/67 | 1 | None |
| Durant, J. | 10/31/66 | 2 | 1 |
| Dyson, E. | 12/05/66 | 1 | None |
| Evans, D. | 09/12/66 | 1 | None |
| Evans, J. M. | 03/14/67 | 1 | None |
| Ford, M. | 10/05/66 | 1 | None |
| Francis, E. | 11/02/66 | 1 | None |
| Franklin, S. | 12/27/66 | 1 | None |
| Frazier, D. L. | 06/27/66 | 1 | None |
| Freeman, M. | 02/13/67 | 1 | None |
| Frierson, M. | 09/26/66 | 1 | 1 |
| Frierson, Q. | 12/27/66 | 1 | 1 |
| Gadson, H. | 06/20/66 | 2 | None |
| Garland, E. | 12/27/66 | 1 | None |
| Gibson, P. | 01/04/67 | 1 | None |
| Gillard, R. W. | 06/27/66 | 1 | 1 |
| Gillis, J. | 07/05/66 | 2 | 1 |
| Glover, J. | 12/27/66 | 1 | 1 |
| Goodman, G. | 06/12/67 | 1 | None |
| Grant, H. | 06/06/66 | 2 | 4 |
| Grant, R. R. | 07/19/66 | 1 | 1 |
| Greene, G. W. | 07/11/66 | 2 | 3 |
| Greene, L. | 01/09/67 | 1 | None |
| Greene, M. | 08/15/66 | 1 | 1 |
| Greene, V. | 12/05/66 | 1 | None |
| Grinnel, I. | 12/20/66 | 1 | None |
| Hall, E. | 02/13/67 | 1 | None |
| Hammond, C. | 12/19/66 | 1 | None |
| Hampton, S. | 04/19/67 | 2 | 4 |
| Harman, W. J. | 07/19/66 | 2 | 1 |
| Harris, R. | 06/20/67 | 1 | 1 |
| Hart, J. | 09/19/66 | 1 | None |
| Harvin, J. | 01/09/67 | 2 | 1 |
| Harvin, S. | 12/05/66 | 1 | None |
| Hastie, W. M. | 06/01/67 | 2 | 1 |
| Hazel, L. | 02/13/67 | 1 | None |
| Henry, M. | 08/08/66 | 2 | 1 |
| Henry, R. M. | 08/18/66 | 1 | None |
| Herrington, E. | 09/19/66 | 1 | 1 |
| Hicks, H. | 09/01/66 | 1 | None |
| Hill, A. | 12/05/66 | 1 | 1 |
| Hilton, E. | 09/19/66 | 1 | None |
| Hilton, L. O. | 06/27/66 | 1 | None |
| Hodge, H. | 11/28/66 | 1 | 1 |
| Hodge, M. | 12/05/66 | 1 | None |
| Holland, E. | 12/28/66 | 1 | None |

| Name | Date of Hire | Initial Job Classification | No. of Transfers To Higher Rated Classification |
|---|---|---|---|
| Howard, A. R. | 06/27/66 | 1 | 2 |
| Howard, C. | 06/27/66 | 2 | 1 |
| Howard, K. | 10/18/66 | 2 | 3 |
| Hudson, A. | 07/05/66 | 2 | 5 |
| Isaac, J. | 09/26/66 | Mechanic - Class B | 2 |
| Jackson, A. | 01/03/67 | 1 | None |
| Jackson, L. | 06/20/66 | 2 | 1 |
| Jacobs, L. | 03/13/67 | 2 | None |
| James, K. | 03/13/67 | 1 | None |
| James, M. R. | 07/12/67 | 1 | None |
| James, M. | 01/11/67 | 1 | None |
| Jefferson, J. | 09/19/66 | 1 | None |
| Jefferson, L. | 04/20/67 | 1 | None |
| Johnson, H. | 09/26/66 | 1 | None |
| Johnson, M. | 12/27/66 | 1 | None |
| Jones, B. L. | 06/27/66 | 1 | 4 |
| Jones, E. | 11/02/66 | 1 | 1 |
| Jones, G. | 08/22/66 | 1 | None |
| Kennedy, S. | 01/09/67 | 1 | 1 |
| Kinard, E. | 01/04/67 | 1 | 1 |
| Kirkland, M. | 09/19/66 | 1 | 1 |
| Kirkland, V.S. | 07/05/66 | 1 | 1 |
| LaGrant, M. | 09/25/67 | 1 | None |
| Lane, H. W. | 06/06/66 | Mechanic - Class C | 1 |
| Lawson, M. | 01/03/67 | 1 | None |
| Lemmon, A. | 07/05/66 | 1 | 5 |
| Leneau, V. | 12/19/66 | 1 | None |
| Lesane, W. | 10/25/66 | 2 | 3 |
| Lesane, W. | 01/30/67 | 2 | 1 |
| Lewis, S. | 02/13/67 | 1 | 1 |
| Mack, B. | 11/02/66 | 1 | None |
| Mack, C. | 07/19/66 | 1 | None |
| Mack, J. | 01/05/67 | 2 | 1 |
| Maple, L. | 07/10/67 | 2 | None |
| Maple, M. | 09/26/66 | 1 | 1 |
| Martin, L. | 09/19/66 | 1 | None |
| Martin, S. | 08/01/66 | 1 | None |
| Massingill, B. | 09/26/66 | 1 | None |
| McBride, E. | 07/05/66 | 1 | None |
| McCant, M. | 07/05/66 | 2 | None |
| McClam, O. M. | 07/18/66 | 1 | 1 |
| McCray, A. | 08/29/66 | 1 | None |
| McCray, T. | 09/19/66 | 1 | None |
| McDonald, S. | 12/05/66 | 1 | None |
| McFadden, D. | 07/05/66 | 1 | None |
| McFadden, J. | 09/13/66 | 2 | None |
| McFadden, L. | 08/29/66 | 1 | 1 |
| McFadden, L. | 12/01/66 | 1 | None |
| McQuillia, E. | 12/05/66 | 1 | None |
| McCants, M. | 12/28/66 | 2 | 1 |
| McCray, J. | 01/03/67 | 1 | None |
| McFadden, H. | 08/28/67 | 2 | 1 |
| Mickens, T. O. | 07/18/66 | 1 | 3 |
| Miller, M. | 12/19/66 | 1 | None |
| Mills, Q. | 12/27/66 | 1 | None |

| Name | Date of Hire | Initial Job Classification | No. of Transfers To Higher Rated Classification |
|---|---|---|---|
| Monroe, C. | 12/21/66 | 2 | 1 |
| Montgomery, A. | 11/09/66 | 1 | None |
| Moorer, P. | 12/12/66 | 2 | None |
| Moses, D. | 09/21/66 | 1 | 1 |
| Moses, L. M. | 02/13/67 | 1 | None |
| Moses, M. | 11/09/66 | 1 | None |
| Moten, M. | 09/26/66 | 1 | 1 |
| Mouzon, E. M. | 06/27/66 | 1 | None |
| Murray, A. | 09/26/66 | 1 | None |
| Nathaniel, G. | 01/08/67 | 1 | 1 |
| Neal, Robert | 09/07/66 | 2 | 1 |
| Nelson, A. | 04/21/67 | 1 | None |
| Nelson, J. | 12/05/66 | 2 | 2 |
| Nelson, J. | 07/07/66 | 1 | None |
| Nixon, E. | 06/23/66 | 2 | 1 |
| Olden, J. | 09/19/66 | 1 | 1 |
| Patterson, W. | 06/27/66 | Mechanic - Class C | 2 |
| Pitts, B. | 08/22/66 | 1 | 2 |
| Pitts, J.R. | 08/31/66 | 2 | 2 |
| Postell, S. | 10/12/66 | 1 | None |
| Potts, O.M. | 09/13/66 | 1 | None |
| Presha, V. | 11/03/66 | 1 | None |
| Prince, O. | 04/25/66 | Mechanic - Class C | 2 |
| Pringle, J. | 06/27/66 | 2 | 3 |
| Pringle, M. | 07/11/66 | 1 | None |
| Pugh, K. | 08/01/66 | 1 | 1 |
| Pumphrey, J. | 04/23/67 | 2 | 1 |
| Quattlebaum, E. | 07/25/66 | 1 | 1 |
| Ragin, M. | 07/07/66 | 1 | None |
| Ragins, H. | 01/05/67 | 2 | None |
| Ramsey, E. | 07/10/67 | 1 | None |
| Rhinehart, J. | 09/12/66 | 1 | 1 |
| Richardson, B. | 06/27/66 | 1 | 1 |
| Richardson, M. | 12/19/66 | 1 | 1 |
| Richardson, W. | 08/08/66 | 1 | None |
| Richburg, D. | 07/18/66 | 1 | 2 |
| Rivers, J. | 09/06/66 | 1 | None |
| Robinson, V. | 09/19/66 | 1 | None |
| Rogers, P. | 12/19/66 | 2 | 1 |
| Rogers, V. | 12/19/66 | 1 | None |
| Rollerson, M. | 02/08/67 | 1 | None |
| Sanders, S. | 07/05/66 | 1 | None |
| Scriven, R. | 02/27/67 | 2 | 1 |
| Shannon, W. | 12/27/66 | 2 | 1 |
| Shaw, P. S. | 07/11/66 | 1 | 4 |
| Singletary, B. | 07/10/67 | 1 | None |
| Singleton, H. | 01/09/67 | 2 | 1 |
| Singleton, M. | 06/06/66 | 2 | 3 |
| Sinkler, M. | 09/12/66 | 1 | None |
| Solomon, B. | 01/03/67 | 1 | None |
| Spann, J. | 09/19/67 | 2 | 1 |
| Spann, W. | 08/08/66 | 1 | None |
| Stukes, E. | 12/27/66 | 1 | None |
| Stukes, M. | 01/11/67 | 1 | None |
| Thames, W.J. | 08/22/66 | 2 | 2 |
| Thompson, D. | 07/18/66 | 1 | 1 |
| Tillie, J. | 01/09/67 | 1 | None |

| Name | Date of Hire | Initial Job Classification | No. of Transfers To Higher Rated Classification |
|---|---|---|---|
| Vareen, J. M. | 07/07/66 | 1 | 1 |
| Vaughn, E. | 07/25/66 | 1 | None |
| Vaughn, L. J. | 07/07/66 | 1 | None |
| Walker, B. | 01/11/67 | 1 | 1 |
| Walter, H. | 12/13/66 | 1 | None |
| Walter, O.M. | 12/02/66 | 1 | None |
| Walters, A. | 12/05/66 | 1 | None |
| Washington, A. | 06/19/67 | 2 | 1 |
| Way, H. | 11/07/66 | 1 | None |
| White, B. | 07/25/66 | 1 | None |
| White, D. | 08/01/66 | 1 | None |
| White, E. | 09/12/66 | 2 | 1 |
| White, M. | 03/13/67 | 1 | None |
| White, V. | 01/04/67 | 1 | 1 |
| Williams, B. | 12/19/66 | 1 | None |
| Williams, B. | 12/19/66 | 1 | None |
| Williams, G. | 01/09/67 | 1 | None |
| Williams, R. | 01/30/67 | 2 | None |
| Wilson, Jr., M. | 06/27/66 | 2 | 4 |
| Wilson, E. | 06/27/66 | 1 | None |
| Wilson, F. | 09/06/66 | 2 | 5 |
| Wilson, G. | 09/19/66 | 1 | None |
| Wilson, T.M. | 08/18/66 | 1 | None |
| Witherspoon, A. | 08/22/66 | 1 | None |
| Wormsby, O. | 01/09/67 | 1 | None |

Interrogatory No. 11. As of October 1, 1967, this Defendant shows the following:

| Name | Date of Hire | Initial Job Classification | No. of Transfers To Higher Rated Classification |
|---|---|---|---|
| Adams, C. | 04/10/67 | 1 | None |
| Adams, L. | 10/18/66 | 2 | 1 |
| Adams, M. | 06/20/66 | 1 | 2 |
| Adams, P. J. | 07/18/66 | 1 | 1 |
| Addy, B. | 07/02/67 | 2 | 1 |
| Alexander, C. | 04/10/67 | 1 | None |
| Alexander, K. | 02/27/67 | 2 | 1 |
| Allen, A. | 06/13/66 | Mechanic - Class A | 2 |
| Allen, M.W. | 12/02/66 | 1 | None |
| Alongi, E. | 01/03/67 | 1 | None |
| Amerson, A. | 09/12/66 | 1 | None |
| Amerson, E. | 03/13/67 | 1 | None |
| Amerson, L. | 01/23/67 | 1 | None |
| Amerson, M. | 06/20/67 | 1 | None |
| Amerson, S. | 03/13/67 | 2 | None |
| Amerson, S. | 02/13/67 | 1 | None |
| Amerson, W. | 08/29/67 | 2 | None |
| Anderson, B. | 01/30/67 | 1 | None |

| Name | Date of Hire | Initial Job Classification | No. of Transfers To Higher Rated Classification |
|---|---|---|---|
| Anderson, B. J. | 02/08/67 | 1 | 1 |
| Anderson, B. | 07/11/66 | 1 | 1 |
| Anderson, C. V. | 07/18/66 | 2 | 4 |
| Anderson, D.E. | 06/02/67 | 1 | None |
| Anderson, J. G. | 06/12/67 | 1 | None |
| Anderson, L. | 07/05/67 | 1 | None |
| Anderson, R.E. | 08/01/66 | 2 | 1 |
| Anderson, R. L. | 07/18/66 | 1 | None |
| Anderson, W. | 08/01/66 | 2 | |
| Andrews, E. | 04/10/67 | 1 | None |
| Andrews, P. | 06/12/67 | 1 | None |
| Ard, J. L. | 03/21/66 | Mechanic - Class A | |
| Ard, M. L. | 07/11/66 | 1 | None |
| Ardis, B. | 01/09/67 | 1 | None |
| Ardis, E. | 04/10/67 | 1 | None |
| Ardis, J. | 05/03/67 | 1 | None |
| Ardis, P. | 08/08/66 | 1 | None |
| Arrants, B. A. | 07/11/66 | 1 | None |
| Arrants, G. | 05/10/67 | 1 | None |
| Athinson, L. A. | 05/01/67 | 2 | 1 |
| Atkinson, B. | 08/29/66 | 1 | 2 |
| Atkinson, E. | 05/10/67 | 1 | None |
| Atkinson, H. | 06/13/66 | 2 | 3 |
| Atkinson, J. B. | 06/20/66 | 1 | None |
| Atkinson, L. H. | 07/20/66 | 1 | None |
| Atkinson, L. | 08/08/66 | 1 | None |
| Atkinson, T. | 09/19/66 | 2 | 1 |
| Austin, J. | 11/28/66 | 2 | 3 |
| Avins, D. | 07/11/66 | 1 | None |
| Avins, L. | 07/11/66 | 1 | None |
| Avins, M. | 07/11/66 | 1 | None |
| Ayers, V. | 04/12/67 | 1 | None |
| Bailey, D. C. | 07/11/66 | 2 | None |
| Bailey, M. K. | 07/18/66 | 1 | 1 |
| Baird, R. E. | 03/21/66 | Mechanic - Class B | 2 |
| Baker, B. D. | 08/18/66 | 1 | None |
| Baker, C. | 11/07/66 | 1 | None |
| Baker, D. | 07/31/66 | 2 | 1 |
| Baker, E. L. | 11/29/66 | 2 | 1 |
| Baker, F. | 01/30/67 | 1 | None |
| Baker, L. L. | 09/26/67 | 2 | 1 |
| Baker, R. | 12/12/66 | 1 | None |
| Ballard, E. | 09/25/67 | 1 | None |
| Ballentine, G. | 07/25/66 | 1 | None |
| Banks, S. | 04/12/67 | 1 | None |
| Barfield, I. | 06/27/66 | 1 | 1 |
| Barkley, D. | 07/17/67 | 1 | None |
| Barkley, R. | 08/26/66 | 2 | 1 |
| Barkley, R. | 06/20/66 | Mechanic - Class C | 1 |
| Barnes, A. | 04/27/67 | 1 | None |
| Barnes, D. | 06/19/67 | 1 | None |
| Barnes, N. | 06/19/67 | 1 | None |
| Barnett, J. R. | 07/18/66 | 1 | None |
| Bartlette, C. | 12/12/66 | 1 | None |
| Barton, S. V. | 10/25/66 | 1 | None |
| Barwick, N. | 06/27/66 | 1 | 1 |

| Name | Date of Hire | Initial Job Classification | No. of Transfers To Higher Rated Classification |
|---|---|---|---|
| Barwick, R. | 06/20/66 | Mechanic - Class C | 1 |
| Bass, C. | 07/13/67 | 1 | None |
| Baughn, B. | 12/19/66 | 1 | None |
| Baxter, P. | 01/23/67 | 1 | None |
| Beal, J. | 04/03/67 | 2 | 1 |
| Beard, A. | 03/22/67 | 2 | 1 |
| Beard, A. | 12/28/66 | 1 | None |
| Beard, C. | 06/13/66 | 2 | 4 |
| Beard, J. | 01/30/67 | 1 | 2 |
| Beard, W.R. | 01/24/67 | 1 | None |
| Beasley, F. | 10/07/66 | 1 | None |
| Beattie, A. | 01/30/67 | 1 | 1 |
| Beckwith, M. | 05/01/67 | 1 | None |
| Belcher, A. | 04/10/67 | 1 | None |
| Benbow, A. | 10/04/66 | 2 | 3 |
| Benehaley, E. | 12/20/66 | 1 | None |
| Benenhaley, C. | 01/05/67 | 2 | None |
| Benenhaley, C. | 05/10/67 | 1 | None |
| Benenhaley, H. | 12/01/66 | 1 | 1 |
| Benenhaley, I. | 11/02/66 | 1 | 2 |
| Benenhaley, L. | 08/01/67 | 2 | 1 |
| Benenhaley, N. | 07/11/66 | 1 | None |
| Benenhaley, P. | 05/09/67 | 2 | 1 |
| Beneski, T. J. | 07/18/66 | Mechanic - Class C | 2 |
| Berry, H. | 02/27/67 | 2 | 5 |
| Berry, R. | 04/27/67 | 1 | None |
| Blackmon, B. | 05/24/67 | 1 | None |
| Blackmon, L. M. | 08/01/66 | 1 | 2 |
| Blackmon, S. | 12/05/66 | 1 | 1 |
| Blackwell, A. | 09/01/66 | 1 | None |
| Blair, O. J. | 07/07/66 | 1 | None |
| Bland, M. | 02/13/67 | 1 | None |
| Blanding, I. | 04/24/67 | 1 | 1 |
| Bochette, J. | 03/08/67 | 2 | None |
| Bodenheimer, J. | 08/28/67 | 2 | None |
| Bolden, D. B. | 07/05/66 | 1 | 5 |
| Boling, W. | 01/03/67 | 1 | None |
| Boone, A. M. | 08/08/66 | 1 | 1 |
| Bose, N. D. | 08/24/66 | 1 | None |
| Boshears, E. | 09/25/67 | 2 | 1 |
| Boyce, J. | 07/25/66 | 1 | None |
| Boyd, L. | 04/24/67 | 1 | 1 |
| Boykin, A. | 06/20/66 | 1 | None |
| Boykin, B. | 12/14/66 | 2 | 1 |
| Boykin, B. | 01/23/67 | 2 | 3 |
| Boykin, F. B. | 07/11/66 | 1 | None |
| Bradford, E. B. | 04/24/67 | 1 | 1 |
| Bradley, H. | 01/04/67 | 1 | None |
| Bramlett, R. | 07/10/67 | 2 | None |
| Bramlett, V. | 11/07/66 | 1 | None |
| Bramlette, H. | 01/03/67 | 1 | None |
| Branham, E. | 12/27/66 | 1 | None |
| Branham, H. | 05/03/67 | 1 | None |
| Branham, J. | 06/05/67 | 2 | None |
| Branham, M. A. | 01/04/67 | 1 | None |
| Brettelle, G. | 08/15/66 | 1 | None |

| Name | Date of Hire | Initial Job Classification | No. of Transfers To Higher Rated Classification |
|---|---|---|---|
| Brewer, B. | 12/05/66 | 1 | None |
| Brewer, F. | 12/05/66 | 1 | None |
| Brewer, T. | 11/07/66 | 2 | 1 |
| Brewer, V. | 02/08/67 | 1 | None |
| Brewer, W. | 02/08/67 | 2 | 1 |
| Bridgeman, C. | 06/20/66 | 1 | None |
| Briggs, M. | 12/13/66 | 1 | None |
| Britt, L. | 06/27/66 | 1 | None |
| Broach, J. A. | 12/02/66 | 1 | None |
| Broadway, R. | 06/19/67 | 2 | None |
| Brock, J. | 06/12/67 | 2 | 1 |
| Browder, S. | 08/18/66 | 1 | None |
| Brown, B. | 03/06/67 | 1 | None |
| Brown, E. M. | 07/10/67 | 1 | None |
| Brown, F. D. | 08/18/66 | 1 | 1 |
| Brown, J. | 04/12/67 | 1 | None |
| Brown, L. | 06/20/66 | 1 | None |
| Brown, M. | 12/15/66 | 1 | None |
| Brown, S. A. | 08/01/66 | Mechanic - Class C | 2 |
| Brown, V. | 06/12/67 | 1 | None |
| Brown, V. | 04/20/67 | 1 | None |
| Brown, W. | 05/01/67 | 1 | None |
| Bruce, A. | 02/08/67 | 1 | 1 |
| Brunson, G. | 08/08/66 | 2 | 1 |
| Bryant, J. | 06/06/66 | 2 | 3 |
| Bryant, L. | 09/06/66 | 1 | None |
| Bryant, R. M. | 09/01/66 | 1 | 1 |
| Buchanan, E. | 12/19/66 | 1 | None |
| Buckner, B. | 12/20/66 | 1 | None |
| Buckner, C. C. | 07/18/66 | 1 | 1 |
| Buckner, J. | 08/08/66 | 1 | None |
| Buckner, R. | 06/12/67 | 2 | None |
| Budeen, J. | 04/10/67 | 1 | None |
| Burnett, M. | 01/24/67 | 1 | None |
| Burroughs, J. | 06/13/67 | 2 | 1 |
| Burrows, E. | 08/24/66 | 1 | None |
| Butler, S. | 07/11/66 | 1 | 1 |
| Byrd, L. A. | 07/18/66 | 1 | 1 |
| Cain, M. | 12/05/66 | 1 | None |
| Callahan, D. L. | 06/27/66 | 1 | None |
| Campbell, V. | 04/10/67 | 1 | None |
| Carpenter, H. | 08/08/66 | 1 | 4 |
| Carpenter, L. | 09/20/67 | 2 | 1 |
| Carraway, B. | 08/18/66 | 1 | None |
| Carrington, S. | 10/25/66 | 1 | None |
| Carter, E. | 12/05/66 | 1 | None |
| Carter, M. A. | 07/11/66 | 1 | None |
| Carter, M. G. | 12/07/66 | 1 | None |
| Casselman, L. A. | 07/05/66 | 1 | 1 |
| Cassidy, C. | 12/29/66 | 2 | 1 |
| Caughman, M. | 05/10/67 | 1 | None |
| Chamber, E. | 12/05/66 | 1 | None |
| Chandler, M. | 07/11/67 | 1 | None |
| Charles, L. | 04/12/67 | 1 | None |
| Chatmon, A. | 05/03/67 | 1 | 1 |
| Christmas, G. | 08/08/66 | 1 | None |

| Name | Date of Hire | Initial Job Classification | No. of Transfers To Higher Rated Classification |
|---|---|---|---|
| Christmas, L. | 01/30/67 | 1 | None |
| Christmas, M. | 02/08/67 | 1 | None |
| Clardy, W. | 09/12/66 | Mechanic - Class C | 1 |
| Clasey, A. N. | 07/21/66 | 1 | 1 |
| Clea, M. | 11/30/66 | 2 | 1 |
| Cockerill, M. | 04/27/67 | 1 | 1 |
| Cockrum, N. | 09/01/66 | 1 | 4 |
| Coffey, P. A. | 08/18/66 | 1 | None |
| Coker, H. | 06/05/67 | 2 | None |
| Coker, J. | 08/08/66 | 1 | None |
| Coker, L. M. | 08/01/66 | 1 | None |
| Coker, T. | 11/28/66 | 1 | None |
| Coleman, Jr., M. | 06/06/66 | 2 | 6 |
| Coleman, C. | 01/04/67 | 2 | 1 |
| Coleman, F. L. | 07/18/66 | 1 | 4 |
| Coleman, J. | 06/27/66 | Mechanic - Class B | 2 |
| Collier, H. | 09/06/66 | Mechanic - Class AA | 2 |
| Collins, B. | 07/05/67 | 1 | None |
| Compton, C. | 06/06/66 | 2 | 5 |
| Conley, M. | 04/24/67 | 1 | None |
| Conner, B. | 07/11/66 | 1 | 1 |
| Connor, C. | 09/27/67 | 2 | None |
| Connor, G. | 11/28/66 | 2 | 1 |
| Conyers, C. | 01/09/67 | 2 | 1 |
| Conyers, E. | 12/19/66 | 1 | 1 |
| Conyers, L. | 05/08/67 | 2 | 1 |
| Cook, B. | 06/20/66 | 1 | None |
| Cook, T. H. | 07/11/67 | 2 | None |
| Copeland, J. | 03/21/66 | Mechanic - Class B | 3 |
| Copeland, L. F. | 08/18/66 | 1 | 1 |
| Corbett, B. | 07/25/66 | 1 | None |
| Corbett, D. | 08/28/67 | 2 | 1 |
| Corbett, S. | 06/06/66 | 2 | 4 |
| Coulson, J. | 04/03/67 | 2 | None |
| Coulter, R. | 09/06/66 | 1 | None |
| Cox, R. B. | 07/05/66 | 1 | 1 |
| Cranford, R. | 08/22/66 | 1 | None |
| Cribb, I. M. | 07/11/66 | 1 | 1 |
| Cribb, J. | 07/17/67 | 1 | None |
| Cribb, L. | 10/28/66 | 1 | None |
| Crim, A. | 09/01/66 | 1 | 3 |
| Crim, M. | 07/17/67 | 2 | 1 |
| Croft, B. A. | 08/22/66 | 1 | 1 |
| Croft, M. | 06/20/66 | Mechanic - Class B | 2 |
| Crosby, M. | 07/10/67 | 1 | 1 |
| Crowley, J. | 06/05/67 | 1 | None |
| Culick, N. | 09/06/66 | 1 | None |
| Currie, D. A. | 09/12/66 | 1 | None |
| Cuttino, H. W. | 08/01/66 | Mechanic - Class A | 1 |
| Davis, C. F. | 03/16/67 | 2 | 1 |
| Davis, E. M. | 06/20/67 | 1 | None |
| Davis, F. | 12/02/66 | 1 | None |
| Davis, H. L. | 06/20/66 | Mechanic - Class C | 1 |
| Davis, I. | 06/27/66 | 1 | 1 |
| Davis, J. | 04/25/66 | Mechanic - Class A | 2 |

| Name | Date of Hire | Initial Job Classification | No. of Transfers To Higher Rated Classification |
|---|---|---|---|
| Davis, P. S. | 09/01/66 | 1 | None |
| Deas, L. B. | 07/05/66 | 1 | None |
| Deas, M. E. | 07/10/67 | 1 | None |
| Dennis, I. N. | 07/05/66 | 1 | 5 |
| Dennis, L. | 04/24/67 | 1 | None |
| Deviney, B. | 06/20/66 | 1 | 2 |
| Dill, C. E. | 06/30/66 | Mechanic - Class B | 2 |
| Dixon, C. K. | 07/05/66 | Mechanic - Class B | 3 |
| Dollard, S. | 12/20/66 | 1 | 2 |
| Dollard, T. | 02/09/67 | 2 | 1 |
| Donaldson, M. | 11/07/66 | 1 | None |
| Dority, W. J. | 09/26/67 | 2 | 1 |
| Doss, M. | 01/09/67 | 1 | None |
| Doucet, A. | 04/03/67 | 1 | 2 |
| Doxey, S. | 11/07/66 | 1 | 2 |
| Dozier, E. | 12/05/66 | 1 | None |
| Driggers, B. | 01/30/67 | 1 | None |
| Driggers, J. H. | 08/10/66 | 1 | None |
| Driggers, M. E. | 07/11/66 | 1 | None |
| Driggers, W. A. | 06/06/66 | Mechanic - Class C | 1 |
| Dubose, R. | 06/01/67 | 1 | None |
| Dunham, L. | 04/21/67 | 1 | None |
| Dunlap, P. J. | 05/31/66 | Mechanic - Class B | 1 |
| Dunn, M. | 08/08/66 | 1 | None |
| Eanes, R. | 06/20/66 | Mechanic - Class B | 2 |
| Easterling, P. | 03/13/67 | 1 | None |
| Elmore, S. | 09/21/67 | 1 | None |
| Englehaupt, G. | 03/30/67 | 2 | None |
| Evans, B. M. | 04/24/67 | 1 | 1 |
| Evans, E.. | 07/18/66 | 1 | 1 |
| Evans, E. | 05/15/67 | 1 | None |
| Evans, J. | 04/17/67 | 1 | None |
| Evans, K. B. | 07/11/66 | 1 | 1 |
| Evans, M. | 08/08/66 | 2 | 1 |
| Fann, L. | 08/08/66 | 1 | None |
| Fant, A. M. | 04/26/67 | 1 | None |
| Farmer, E. | 06/05/67 | 2 | 1 |
| Farr, V. | 11/07/66 | 1 | None |
| Finley, F. | 06/06/66 | 2 | 1 |
| Fischer, L. | 12/28/66 | 1 | None |
| Floyd, D. | 06/27/66 | 1 | None |
| Floyd, F. | 12/12/66 | 1 | None |
| Floyd, J. | 05/03/67 | 1 | None |
| Floyd, M. | 03/13/67 | 1 | None |
| Floyd, M. L. | 07/12/67 | 1 | None |
| Floyd, M. | 07/12/67 | 1 | None |
| Floyd, N. | 03/14/67 | 1 | None |
| Floyd, S. | 05/01/67 | 1 | None |
| Fortune, I. | 07/17/67 | 2 | None |
| Foster, B. | 01/24/67 | Mechanic - Class AA | 1 |
| Frady, M. W. | 07/18/66 | 1 | 3 |
| Frank, M. | 07/11/66 | 1 | 5 |
| Franklin, D. | 06/27/67 | 2 | 1 |
| Frederick, M. | 09/01/66 | 1 | 2 |
| Frederick, R. D. | 07/18/66 | 2 | 4 |
| Freeman, M. | 04/27/67 | 1 | None |
| Freeman, P. | 12/19/66 | 1 | 1 |
| Friel, L. | 12/02/66 | 1 | None |

| Name | Date of Hire | Initial Job Classification | No. of Transfers To Higher Rated Classification |
|---|---|---|---|
| Frierson, D. | 08/24/66 | 1 | None |
| Frierson, S. | 12/16/66 | 2 | 3 |
| Frierson, W. | 02/06/67 | Mechanic - Class A | None |
| Frye, E. | 01/09/67 | 1 | None |
| Frye, J. | 02/15/67 | 2 | None |
| Frye, R. | 12/27/66 | 1 | None |
| Fuson, G. | 06/12/67 | 1 | None |
| Gainey, B. | 08/10/66 | 1 | 1 |
| Gainey, D. | 05/30/67 | 1 | None |
| Gainey, D. I. | 08/01/66 | 1 | None |
| Gainey, F. | 07/25/66 | 1 | 1 |
| Gainey, L. | 06/27/66 | 1 | 1 |
| Gainey, M. | 12/28/66 | 1 | 1 |
| Gainey, S. | 07/05/67 | 1 | None |
| Gainey, W. | 09/11/67 | 2 | None |
| Galloway, E. | 09/01/66 | 1 | None |
| Galloway, J. | 01/24/67 | 1 | None |
| Galloway, M. R. | 11/28/66 | 1 | None |
| Garcia, I. B. | 12/05/66 | 1 | None |
| Gardner, J. | 06/27/66 | 1 | 2 |
| Gardner, M. | 08/29/66 | 1 | 1 |
| Garrison, J. | 08/08/66 | 1 | 1 |
| Gaymon, L. | 09/12/66 | 2 | 1 |
| Geddings, A. | 10/05/66 | 1 | None |
| Geddings, B. | 08/01/66 | 1 | None |
| Geddings, C. J. | 02/13/67 | 1 | None |
| Geddings, C. L. | 08/01/66 | 1 | 1 |
| Geddings, F. | 06/27/66 | Mechanic - Class C | 2 |
| Geddings, H. | 08/01/66 | 1 | None |
| Geddings, J. | 08/01/66 | 1 | 1 |
| Geddings, L. | 08/10/66 | 1 | None |
| Geddings, M. S. | 06/27/66 | 1 | 2 |
| Geddings, N. | 06/01/67 | 1 | None |
| Geddings, N. | 08/01/66 | 1 | 2 |
| Geddings, P. | 06/20/66 | Mechanic - Class C | 2 |
| Geddings, R. | 08/08/66 | 1 | None |
| Geddings, T. | 09/01/66 | 1 | None |
| Gibbons, R. | 08/15/66 | Mechanic - Class B | 1 |
| Gibson, J. | 06/01/67 | 1 | None |
| Gibson, L. M. | 06/19/67 | 1 | None |
| Glisson, L. A. | 07/05/67 | 2 | 1 |
| Glisson, M. A. | 07/05/67 | 1 | 1 |
| Goddard, R. | 11/02/66 | 1 | None |
| Godwin, D. | 08/08/66 | 1 | None |
| Goff, W. W. | 06/06/66 | Mechanic - Class B | 2 |
| Goldman, V. | 06/13/66 | 2 | 1 |
| Gonzales, R. | 09/06/66 | 1 | None |
| Gowdy, D. H. | 08/18/66 | 1 | None |
| Gowdy, N. | 12/15/66 | 1 | None |
| Grabeel, F. | 12/12/66 | 2 | None |
| Graham, M. | 10/12/66 | 1 | None |
| Grant, J. | 09/19/66 | 2 | 4 |
| Grantham, G. F. | 08/22/66 | Mechanic - Class B | 2 |
| Green, D. | 07/25/66 | 2 | 1 |
| Green, J. | 12/05/66 | 1 | None |

| Name | Date of Hire | Initial Job Classification | No. of Transfers To Higher Rated Classification |
|---|---|---|---|
| Green, M. | 09/01/66 | 1 | 1 |
| Green, M. A. | 07/12/67 | 1 | None |
| Griffin, B. | 06/19/67 | 1 | None |
| Griffin, D. P. | 06/27/66 | 1 | 2 |
| Griffin, N. | 01/09/67 | 1 | None |
| Griswold, B. | 07/10/67 | 1 | None |
| Gudson, C. | 07/12/67 | 1 | None |
| Guinther, R. | 06/06/66 | Mechanic - Class C | 2 |
| Haley, L. | 09/26/67 | 2 | 1 |
| Haley, R. | 09/19/66 | 2 | 1 |
| Hall, E. | 12/12/66 | 1 | 1 |
| Hall, H. | 02/08/67 | 1 | None |
| Hampton, D. L. | 06/25/67 | 2 | 1 |
| Hancock, H. | 06/06/66 | 2 | 6 |
| Hancock, J. C. | 05/09/67 | 2 | 1 |
| Hancock, J. C. | 08/01/66 | 1 | 1 |
| Haney, M. | 07/10/67 | 1 | None |
| Hardee, G. | 04/19/67 | 1 | None |
| Hardin, D. | 09/26/66 | 1 | None |
| Hardin, R. L. | 06/27/66 | Mechanic - Class C | 2 |
| Harper, J. | 12/13/66 | 1 | None |
| Harrington, J. | 10/12/66 | 2 | 1 |
| Harrington, L. | 06/26/67 | 1 | None |
| Harrington, R. | 09/21/66 | 1 | None |
| Hart, H. | 04/27/67 | 1 | None |
| Hatfield, R. | 07/31/67 | 2 | 1 |
| Hawthorne, W. | 08/08/66 | 2 | 3 |
| Hearrell, M. M. | 06/27/66 | 1 | None |
| Henderson, J. | 06/20/67 | 1 | None |
| Hensley, M. | 09/19/66 | 1 | 1 |
| Herrington, L. | 05/24/67 | 1 | None |
| Herrington, M. | 04/27/67 | 1 | None |
| Hickson, M. C. | 06/27/66 | 1 | None |
| High, E. | 04/24/67 | 2 | None |
| Hill, D. | 09/19/66 | 1 | None |
| Hill, S. | 01/23/67 | 1 | None |
| Hinson, G. | 07/10/67 | 1 | None |
| Hodge, B. | 01/31/67 | 2 | 1 |
| Hodge, H. | 09/12/66 | Mechanic - Class C | 2 |
| Hodge, J. | 07/25/66 | 1 | None |
| Hodge, J. | 08/08/66 | 1 | None |
| Hodge, L. N. | 09/19/66 | 1 | None |
| Hodge, L. | 05/30/67 | 1 | None |
| Hodge, M. E. | 08/18/66 | 1 | None |
| Hodge, R. | 11/16/66 | 1 | None |
| Hodge, R. | 08/08/66 | 1 | 1 |
| Hodges, E. | 07/24/67 | 1 | None |
| Holladay, A. B. | 08/01/66 | 1 | 2 |
| Holladay, C. | 05/30/67 | 2 | 1 |
| Holladay, C. | 11/16/66 | 2 | 3 |
| Holladay, H. | 03/09/67 | 2 | 1 |
| Holladay, O. B. | 07/21/66 | 1 | 1 |
| Holladay, T. | 07/12/67 | 2 | 1 |
| Holladay, V. | 05/03/67 | 1 | None |
| Holland, D. | 09/19/66 | 1 | None |

| Name | Date of Hire | Initial Job Classification | No. of Transfers To Higher Rated Classification |
|---|---|---|---|
| Holland, M. | 04/27/67 | 1 | None |
| Holloman, M. | 08/08/66 | 1 | None |
| Holloman, V. D. | 07/25/66 | 1 | None |
| Holmes, V. | 09/21/66 | 1 | None |
| Hood, M. | 09/01/66 | 1 | None |
| Hopkins, C. L. | 07/21/66 | 1 | 1 |
| Hopkins, L. | 08/23/67 | 2 | 1 |
| Hopkins, R. | 06/27/66 | 2 | 4 |
| Hopkins, T. | 09/06/66 | 2 | 1 |
| Hopson, L. | 08/29/67 | 1 | None |
| Hornsby, R. K. | 06/27/66 | 1 | None |
| Horton, L. | 08/22/66 | 1 | 2 |
| Hostetler, H. | 08/08/66 | 1 | None |
| Houck, R. | 04/25/67 | 1 | None |
| Howard, E. | 04/12/67 | 1 | None |
| Huckabee, M. | 06/19/67 | 1 | None |
| Hudson, F. E. | 07/05/66 | 2 | 3 |
| Hudson, G. | 10/24/66 | 1 | 1 |
| Hudson, P. | 08/08/66 | 1 | None |
| Hudson, V. | 06/27/66 | 1 | None |
| Huggins, A. L. | 07/11/66 | 1 | 2 |
| Huggins, B. | 12/28/66 | 1 | None |
| Huggins, O. D. | 06/27/66 | 1 | None |
| Hughes, M. | 02/13/67 | 1 | 1 |
| Humphries, J. | 09/19/66 | 1 | 1 |
| Huntley, J. | 06/06/66 | 2 | 4 |
| Huntley, M. | 08/18/66 | 1 | None |
| Hurst, M. | 11/02/66 | 1 | None |
| Hutson, M. | 01/23/67 | 1 | None |
| Hyatt, P. | 09/21/66 | 1 | None |
| Hyde, N. | 11/28/66 | 2 | 1 |
| Hyde, T. | 08/08/66 | 1 | 1 |
| Isaac, M. | 04/24/67 | 1 | 1 |
| Jackson, Jr., L. | 07/18/66 | Mechanic - Class C | 1 |
| Jackson, D. | 06/20/67 | 1 | None |
| Jackson, E. | 11/01/66 | 1 | None |
| Jackson, H. | 04/25/66 | Mechanic - Class B | 2 |
| Jackson, M. E. | 08/01/66 | 1 | None |
| Jackson, M. | 06/20/67 | 1 | None |
| Jacobs, E. | 09/19/66 | 1 | None |
| Jake, H. | 04/20/67 | 1 | None |
| James, C. | 09/01/66 | 1 | None |
| James, G. | 08/10/66 | 1 | None |
| James, H. | 12/27/66 | 1 | None |
| Jeffords, M. D. | 10/24/66 | 1 | None |
| Jeffords, R. L. | 07/05/66 | 1 | 1 |
| Jernigan, Y. | 08/10/66 | 1 | None |
| Jeror, F. | 04/26/67 | 1 | 2 |
| Jeror, R. | 05/10/67 | 1 | 1 |
| Johnson, A. | 03/14/67 | 1 | 1 |
| Johnson, B. | 04/24/67 | 1 | None |
| Johnson, E. | 05/24/67 | 1 | None |
| Johnson, J. R. | 07/11/66 | Mechanic - Class E | None |
| Johnson, L. | 02/13/67 | 1 | None |

| Name | Date of Hire | Initial Job Classification | No. of Transfers To Higher Rated Classification |
|---|---|---|---|
| Johnson, M. | 01/30/67 | 1 | None |
| Johnson, O. | 09/05/67 | 2 | None |
| Johnson, R. | 05/03/67 | 1 | None |
| Johnson, V. | 05/24/67 | 1 | None |
| Johnston, R. M. | 07/25/66 | Mechanic - Class AA | 2 |
| Jones, A. | 01/09/67 | 1 | None |
| Jones, M. E. | 08/01/66 | 2 | 1 |
| Jones, T. | 09/26/66 | 1 | None |
| Jones, W. | 06/06/66 | 2 | 4 |
| Jones, W. M. | 07/11/66 | 1 | None |
| Josey, L. | 09/25/67 | 1 | None |
| Kegley, S. | 01/23/67 | 1 | None |
| Kelley, G. | 08/22/66 | 1 | None |
| King, I. R. | 09/19/66 | 1 | None |
| King, V. | 04/10/67 | 1 | None |
| Kirby, D. | 05/30/67 | 1 | None |
| Kivett, B. | 01/03/67 | 1 | None |
| Kjer, M. | 06/12/67 | 2 | None |
| Klawinski, M. | 05/09/67 | 2 | None |
| Kolb, A. | 08/28/67 | 2 | 1 |
| Kruger, L. | 02/13/67 | 1 | None |
| Lair, J. | 11/28/66 | 1 | 1 |
| Lambert, O. | 12/20/66 | 1 | None |
| Layton, D. | 03/14/67 | 1 | None |
| Lee, B. | 01/03/67 | 1 | None |
| Lee, C. | 02/13/67 | 1 | None |
| Lee, E. | 04/27/67 | 1 | None |
| Lee, E. | 04/26/67 | 1 | 1 |
| Lee, J. | 06/20/67 | 2 | 1 |
| Lee, L. | 08/10/66 | 1 | 2 |
| Lewis, C. | 01/03/67 | 1 | None |
| Lewis, F. | 07/10/67 | 1 | None |
| Lighthill, C. | 05/03/67 | 1 | None |
| Lindley, V. | 06/01/67 | 1 | None |
| Lindsay, E. L. | 09/11/66 | 2 | 4 |
| Linton, L. | 05/01/67 | 1 | None |
| Linton, T. | 12/19/66 | 1 | 1 |
| Lloyd, P. | 05/08/67 | 1 | None |
| Lloyd, V. | 04/27/67 | 1 | None |
| Loghing, A. | 07/11/66 | 1 | None |
| Long, T. | 08/29/66 | 1 | None |
| Lotwis, W. | 08/01/66 | 2 | 6 |
| Lovelace, F. | 08/08/66 | 1 | None |
| Lowrey, M. M. | 06/27/66 | 1 | 1 |
| Lowry, M. | 04/17/67 | 1 | None |
| Lyons, E. | 06/12/67 | 1 | None |
| Mack, C. | 06/12/67 | 2 | 1 |
| Madray, T. W. | 06/06/66 | Mechanic - Class A | 2 |
| Makison, V. | 09/20/67 | 1 | None |
| Marshall, F. | 02/13/67 | 1 | None |
| Martin, B. | 08/08/66 | 1 | 1 |
| Martin, B. | 06/06/66 | 2 | 3 |
| Maslanko, R. | 07/10/67 | 1 | None |
| Mathews, R. | 06/27/66 | Mechanic - Class C | 2 |
| Mathis, C. | 07/19/66 | 2 | None |
| Mathis, L. H. | 07/19/66 | 2 | 3 |

| Name | Date of Hire | Initial Job Classification | No. of Transfers To Higher Rated Classification |
|---|---|---|---|
| Mathis, M. | 04/24/67 | 1 | None |
| Mathis, P. | 02/13/67 | 1 | None |
| Matlock, G. | 05/03/67 | 1 | None |
| Matlock, V. | 02/27/67 | 2 | 1 |
| Matthews, B. | 09/06/66 | 2 | 2 |
| Matthews, L. | 02/08/67 | 1 | None |
| Maxwell, E. | 09/25/67 | 2 | 1 |
| Maybee, A. | 12/19/66 | 1 | 2 |
| McCants, C. | 08/22/66 | 1 | None |
| McCathern, B. B. | 07/05/66 | 1 | 4 |
| McClam, L. | 11/28/66 | 1 | None |
| McCleary, V. | 08/10/66 | 1 | 1 |
| McCormic, J. L. | 07/19/66 | 2 | 4 |
| McDearmon, M. M. | 07/18/66 | 1 | None |
| McDonald, A. | 08/22/66 | 1 | None |
| McElveen, P. H. | 10/05/66 | 1 | 1 |
| McElveen, T. | 08/18/66 | 1 | None |
| McGee, B. A. | 07/11/66 | 1 | None |
| McHone, V. | 12/05/66 | 1 | 1 |
| McIlvain, J. | 07/05/66 | 1 | None |
| McIntosh, M. | 09/01/66 | 1 | 1 |
| McKenzie, C. | 07/25/66 | 1 | None |
| McMickell, M. | 08/10/66 | 1 | None |
| McPhail, B. | 08/01/66 | 1 | 2 |
| McAllister, A. | 01/09/67 | 1 | None |
| McAllister, B. | 07/05/67 | 2 | None |
| McClam, E. M. | 09/12/66 | 1 | None |
| McClary, M. | 03/19/67. | 2 | 1 |
| McCormick, C. | 04/24/67 | 1 | None |
| McCormick, M. | 09/18/67 | 2 | 1 |
| McCoy, D. | 09/20/67 | 1 | None |
| McCoy, H. | 09/04/67 | 1 | 1 |
| McCoy, J. | 12/29/66 | 2 | 3 |
| McCoy, S. | 01/30/67 | 1 | None |
| McDaniel, M. B. | 07/18/66 | 1 | 1 |
| McDowell, E. | 01/23/67 | 1 | 1 |
| McDuffie, M. | 05/08/67 | 1 | None |
| McElveen, M. | 06/12/67 | 1 | None |
| McFaddin, H. | 07/17/67 | 1 | None |
| McGee, D. | 01/30/67 | 1 | None |
| McGee, R. | 08/17/66 | 2 | 1 |
| McLeod, D. | 04/11/67 | 1 | None |
| McLeod, E. | 07/17/67 | 2 | 1 |
| McLeod, I. | 01/04/67 | 1 | None |
| McLeod, P. | 12/20/66 | 1 | 1 |
| McLeod, R. | 12/29/66 | 2 | 2 |
| McLhinney, B. | 07/12/67 | 1 | None |
| McLhinney, D. | 03/28/67 | 2 | 4 |
| Medlin, N. A. | 07/05/66 | 1 | None |
| Medlin, R. | 07/05/67 | 1 | None |
| Meeks, D. | 07/10/67 | 2 | None |
| Melton, M. | 04/17/67 | 1 | None |
| Melton, M. | 07/05/66 | 1 | None |
| Milam, E. L. | 07/05/66 | 1 | None |
| Milam, I. H. | 06/27/66 | Mechanic - Class C | 1 |
| Miles, A. | 11/02/66 | 1 | None |
| Miles, C. | 05/10/67 | 1 | None |

| Name | Date of Hire | Initial Job Classification | No. of Transfers To Higher Rated Classification |
|---|---|---|---|
| Miles, M. G. | 07/05/66 | 1 | 1 |
| Miles, Rosa H. | 07/05/66 | 1 | None |
| Miles, W. | 04/25/67 | 2 | 1 |
| Mills, M. | 07/10/67 | 1 | None |
| Mims, C. | 04/10/67 | 1 | None |
| Mims, E. | 08/29/66 | 2 | 3 |
| Mims, J. W. | 02/08/67 | 2 | 3 |
| Mims, L. B. | 09/12/66 | 1 | None |
| Mincey, W. | 07/10/67 | 2 | None |
| Mitchum, B. | 07/12/67 | 1 | None |
| Mixon, L. | 05/01/67 | 1 | None |
| Montalbano, J. | 06/05/67 | 2 | 1 |
| Moody, E. | 04/24/67 | 1 | None |
| Mooneyham, M. | 12/29/66 | 1 | 1 |
| Mooneyhan, D. | 04/03/67 | 1 | 1 |
| Mooneyhan, E. L. | 07/05/66 | 1 | None |
| Moore, A. | 09/11/67 | 2 | 4 |
| Moore, B. | 10/24/66 | 1 | 1 |
| Moore, M. | 07/17/67 | 1 | 1 |
| Moore, P. | 11/01/66 | 1 | 3 |
| Moore, P. N. | 07/05/66 | 1 | None |
| Moorer, A. | 02/08/67 | 1 | None |
| Morris, E. P. | 07/05/66 | 1 | 1 |
| Morris, H. | 08/01/66 | 2 | 1 |
| Morris, P. | 11/09/66 | 1 | None |
| Morris, W. | 07/17/67 | 2 | None |
| Mozingo, R. | 08/08/66 | 2 | 1 |
| Murphree, J. | 05/24/67 | 1 | None |
| Nathaniel, S. | 08/13/67 | 2 | 1 |
| Neal, G. C. | 07/14/66 | 1 | None |
| Nesbitt, J. A. | 08/01/66 | 2 | 3 |
| Nesbitt, M. | 07/25/66 | 2 | 4 |
| Nichols, P. | 07/05/67 | 1 | 1 |
| Nichols, R. C. | 07/05/66 | 1 | 4 |
| Nichols, S. J. | 07/18/66 | 1 | 1 |
| Nichols, T. | 05/08/67 | 1 | None |
| Niklas, J. | 07/17/67 | 1 | None |
| Norris, G. | 12/05/66 | 1 | None |
| Norris, L. L. | 07/07/66 | 1 | None |
| Norris, T. | 04/25/66 | Mechanic - Class C | 1 |
| Nunnery, A. | 11/03/66 | 1 | None |
| Nunnery, C. E. | 07/11/66 | 2 | 1 |
| Ortiz, F. C. | 07/17/67 | 1 | 1 |
| Osborne, P. | 02/13/67 | 1 | None |
| Osekoski, H. E. | 07/07/66 | 1 | 3 |
| Outlaw, D. | 02/13/67 | 1 | None |
| Outlaw, G. | 06/12/67 | 1 | None |
| Outlaw, I. M. | 08/08/66 | 1 | None |
| Owens, P. | 09/06/66 | 1 | 1 |
| Oxendine, A. M. | 01/23/67 | 1 | None |
| Oxendine, B. | 12/15/66 | 1 | None |
| Oxendine, B. | 12/15/66 | 1 | None |
| Oxendine, D. M. | 07/07/66 | 1 | None |
| Oxendine, L. | 07/11/66 | 1 | None |
| Pack, C. W. | 09/12/66 | 1 | None |
| Pack, J. | 06/13/67 | 1 | None |
| Pack, S. | 08/28/67 | 1 | None |

| Name | Date of Hire | Initial Job Classification | No. of Transfers To Higher Rated Classification |
|---|---|---|---|
| Page, G. | 09/01/66 | 1 | None |
| Page, T. | 06/06/66 | 2 | 6 |
| Paranto, D. | 04/20/67 | 2 | None |
| Parker, C. | 09/06/66 | 1 | 1 |
| Parker, C. | 07/11/66 | 2 | 3 |
| Parker, G. | 08/08/66 | 1 | None |
| Parker, N. M. | 07/12/67 | 1 | None |
| Parnell, J. J. | 06/20/66 | Mechanic - Class A | 1 |
| Pate, J. | 07/25/66 | 1 | None |
| Paul, M. | 09/13/67 | 2 | 4 |
| Pearson, B. | 01/05/67 | 2 | None |
| Peavy, M. J. | 07/07/66 | 1 | None |
| Peeples, O. | 12/05/66 | 1 | 1 |
| Pennell, G. | 06/27/66 | 1 | 3 |
| Phillips, M. R. | 12/05/66 | 1 | None |
| Pierson, V. M. | 07/07/66 | 1 | 1 |
| Pinkney, M. | 04/24/67 | 1 | None |
| Pittman, L. | 11/03/66 | 1 | None |
| Piver, F. | 02/08/67 | 1 | None |
| Player, A. M. | 11/07/66 | 1 | None |
| Poole, B. | 11/28/66 | 1 | 1 |
| Poole, M. | 04/10/67 | 1 | None |
| Poole, M. | 09/01/66 | 1 | None |
| Pope, E. | 09/19/66 | 2 | 2 |
| Pope, S. | 04/24/67 | 1 | None |
| Poplin, W. | 05/16/66 | 2 | 3 |
| Porter, L. | 05/08/67 | 2 | 1 |
| Porter, M. | 08/24/66 | 1 | None |
| Porter, V. | 04/17/67 | 1 | 1 |
| Price, I. N. | 02/08/67 | 1 | None |
| Prine, E. | 01/03/67 | 1 | None |
| Pritchard, R. | 07/07/66 | 1 | 1 |
| Privette, B. | 08/15/66 | 1 | 1 |
| Purvis, F. | 12/14/66 | 2 | 3 |
| Purvis, J. | 08/08/66 | 1 | None |
| Quattlebaum, B. | 01/23/67 | 1 | None |
| Rabon, B. | 07/14/66 | 1 | 2 |
| Radcliff, A. | 09/06/66 | 1 | None |
| Raines, S. | 09/06/66 | 1 | None |
| Ramsey, J. | 06/14/66 | 2 | 3 |
| Rape, B. | 06/13/67 | 1 | None |
| Ray, B. | 08/15/66 | 1 | 2 |
| Ray, C. | 10/31/66 | 2 | 2 |
| Ray, E. | 08/24/66 | 1 | None |
| Ray, M. | 06/19/67 | 2 | 1 |
| Ray, R. | 11/28/66 | 1 | None |
| Ray, S. | 10/25/66 | 1 | None |
| Ray, S. | 09/01/66 | 1 | 2 |
| Ray, V. | 09/26/66 | 1 | None |
| Reaves, P. E. | 07/07/66 | 1 | None |
| Reynolds, S. | 03/14/67 | 1 | None |
| Reynolds, T. C. | 05/10/67 | 1 | None |
| Rhodes, G. | 04/27/67 | 1 | None |
| Rice, J. | 05/10/67 | 1 | 2 |

| Name | Date of Hire | Initial Job Classification | No. of Transfers To Higher Rated Classification |
|---|---|---|---|
| Richardson, L. | 09/01/66 | 1 | None |
| Richardson, L. | 12/05/66 | 1 | 1 |
| Richardson, W. | 06/09/67 | 2 | 1 |
| Richardson, W. | 08/29/66 | 1 | None |
| Richburg, D. | 05/03/67 | 1 | 1 |
| Richburg, L. | 01/04/67 | 1 | None |
| Riddle, L. | 09/06/66 | Mechanic - Class C | 1 |
| Riddle, R. | 06/27/66 | 1 | 2 |
| Ridgeway, J. | 04/17/67 | 1 | None |
| Ridgeway, M. | 09/01/66 | 1 | 2 |
| Ridgeway, P. | 05/08/67 | 1 | None |
| Ridley, J. | 05/02/66 | Mechanic - Class B | 2 |
| Riles, I. | 06/07/67 | 1 | None |
| Riles, M. | 04/20/67 | 1 | None |
| Riley, E. T. | 07/14/66 | 1 | None |
| Robertson, W. | 06/06/66 | 2 | 6 |
| Robinson, A. | 12/27/66 | 1 | None |
| Robinson, J. | 03/13/67 | 1 | None |
| Robinson, K. E. | 07/11/66 | 2 | 4 |
| Rodgers, F. | 08/08/66 | 1 | None |
| Rodgers, L. | 06/02/67 | 1 | None |
| Rodgers, W. | 12/05/66 | 1 | None |
| Rogers, A. | 09/05/67 | 2 | None |
| Rogers, E. | 04/17/67 | 1 | None |
| Rogers, H. | 01/09/67 | 2 | 1 |
| Rogers, J. L. | 07/18/66 | 1 | 1 |
| Romines, M. | 05/30/67 | 1 | None |
| Ross, J. | 12/28/66 | 1 | 2 |
| Ross, J. | 03/13/67 | 1 | None |
| Ross, L. | 05/24/67 | 1 | None |
| Ross, W. | 12/12/66 | 1 | None |
| Rowell, J. | 06/13/67 | 1 | None |
| Russell, B. J. | 08/22/66 | Mechanic - Class C | 2 |
| Russell, R. L. | 08/22/66 | 1 | None |
| Ryles, L. | 08/08/66 | 1 | 2 |
| Samford, G. | 10/07/66 | 1 | None |
| Sanders, C. | 02/15/67 | 2 | 1 |
| Sanders, J. | 07/11/66 | 2 | None |
| Sanders, M. | 04/12/67 | 1 | None |
| Sanders, M. | 07/12/67 | 1 | None |
| Sargent, A. | 05/24/67 | 1 | None |
| Sargent, M. | 02/13/67 | 1 | None |
| Saxon, M. | 08/01/66 | 1 | None |
| Scarborough, D. | 02/08/67 | 1 | None |
| Scurry, A. | 11/07/66 | 1 | 1 |
| Seagroves, F. | 02/08/67 | 1 | None |
| Sears, J. | 09/11/67 | Mechanic - Class C | None |
| Shirah, P. | 07/05/67 | 1 | None |
| Shirley, L. | 08/22/66 | 1 | 3 |
| Shoemake, A. | 11/29/66 | 1 | None |
| Short, D. | 05/24/67 | 1 | None |
| Simplicio, L. | 06/12/67 | 2 | 1 |
| Sims, J. | 11/07/66 | 2 | 1 |
| Singleton, T. | 06/06/67 | 2 | None |
| Sipes, N. | 07/17/67 | 1 | None |
| Skinner, G. B. | 07/18/66 | 2 | 2 |
| Skinner, S. | 08/08/66 | 2 | 3 |
| Smith, A. | 07/18/66 | 1 | 1 |

| Name | Date of Hire | Initial Job Classification | No. of Transfers To Higher Rated Classification |
|---|---|---|---|
| Smith, L. J. | 04/10/67 | 1 | None |
| Smith, L. | 06/05/67 | 1 | None |
| Smith, M. | 08/29/66 | 1 | None |
| Smith, M. | 11/02/66 | 1 | 1 |
| Smith, M. R. | 09/12/66 | 1 | None |
| Smith, R. L. | 07/07/66 | 1 | 1 |
| Smith, T. | 01/03/67 | 1 | None |
| Smith, W. | 09/06/66 | 2 | 3 |
| Smothers, J. | 04/20/67 | 1 | None |
| Snipes, G. | 06/06/67 | 1 | None |
| Snipes, L. | 01/30/67 | 1 | None |
| Snow, L. A. | 08/01/66 | 1 | None |
| Solari, D. | 01/30/67 | 2 | 1 |
| Soloman, T. | 07/05/67 | 2 | None |
| Springs, A. | 02/06/67 | 2 | 1 |
| Spry, R. | 08/10/66 | 1 | None |
| Squires, F. | 05/01/67 | 2 | 1 |
| Sr., L. A. Atkinson | 12/30/66 | 2 | 1 |
| Stalvey, B. | 05/10/67 | 1 | None |
| Stalvey, C. | 12/19/66 | 2 | 1 |
| Stalvey, C. | 01/09/67 | 2 | 1 |
| Stalvey, F. | 01/09/67 | 1 | None |
| Stalvey, I. | 05/29/67 | 2 | 1 |
| Staton, D. | 06/05/67 | 2 | None |
| Steele, E. | 08/29/66 | 1 | 2 |
| Steen, M. | 07/10/67 | 1 | None |
| Stephen, O. | 04/17/67 | 2 | 1 |
| Stephens, M. | 08/29/66 | 1 | 1 |
| Stevens, A. | 04/24/67 | 1 | None |
| Stewart, C. | 11/07/66 | 1 | None |
| Stidd, C. | 03/08/67 | 1 | None |
| Stokes, B. | 09/15/66 | 1 | None |
| Stokes, C. L. | 08/01/66 | 2 | None |
| Stone, A. L. | 08/02/66 | 2 | 5 |
| Stone, R. | 09/19/66 | 2 | 4 |
| Suggs, E. | 06/06/66 | Mechanic - Class B | 1 |
| Sullivan, S. | 05/08/67 | 1 | None |
| Svetlik, A. | 06/06/66 | Mechanic - Class A | 2 |
| Taylor, B. | 07/07/66 | 1 | None |
| Taylor, B. L. | 07/25/66 | 1 | None |
| Taylor, D. | 07/18/66 | 1 | 3 |
| Taylor, H. | 07/11/66 | 2 | 2 |
| Taylor, J. H. | 07/07/66 | 1 | None |
| Taylor, W. | 02/06/67 | 2 | 4 |
| Teague, H. | 07/11/66 | 1 | None |
| Tennant, G. | 07/05/67 | 1 | None |
| Tervilliger, E. | 12/19/66 | 1 | 1 |
| Tester, S. | 12/27/66 | 1 | None |
| Thames, R. | 07/25/66 | 1 | None |
| Thames, W. | 09/01/66 | 2 | 3 |
| Thigpen, D. | 07/25/66 | 1 | None |
| Thigpen, W. | 02/08/67 | 1 | None |
| Thomas, D. M. | 06/01/67 | 1 | None |
| Thompson, L. L. | 04/03/67 | 1 | None |
| Tidwell, D. | 01/03/67 | 1 | None |

| Name | Date of Hire | Initial Job Classification | No. of Transfers To Higher Rated Classification |
|---|---|---|---|
| Tidwell, L. | 12/29/66 | 2 | 1 |
| Tidwell, M. L. | 08/01/66 | 1 | 1 |
| Tidwell, S. | 01/09/67 | 1 | None |
| Tidwell, T. | 12/12/66 | 2 | 1 |
| Tidwell, T. | 03/22/67 | 2 | None |
| Timmons, D. | 06/20/66 | 1 | None |
| Timmons, E. E. | 07/07/66 | 1 | 4 |
| Timmons, I. M. | 08/15/66 | 1 | None |
| Timmons, L. | 09/21/67 | 1 | None |
| Tisdale, R. | 04/12/67 | 1 | None |
| Tobias, A. | 12/12/66 | 1 | None |
| Tolbert, A. L. | 07/07/66 | 1 | None |
| Tomlinson, J. | 01/04/67 | 1 | None |
| Trimnal, J. | 07/10/67 | 2 | None |
| Trimnal, P. | 04/27/67 | 1 | None |
| Trimna, V. | 04/17/67 | 1 | None |
| Turner, A. L. | 08/10/66 | 1 | 2 |
| Turner, E. | 07/05/67 | 2 | None |
| Turner, G. | 04/10/67 | 1 | None |
| Turner, I. | 07/18/66 | 1 | 1 |
| Turner, J. | 07/05/67 | 1 | 1 |
| Turner, L. | 09/01/66 | 1 | 1 |
| Turner, L. | 12/05/66 | 1 | None |
| Turner, S. | 09/06/66 | 1 | None |
| Turner, S. | 07/25/66 | 1 | None |
| Turner, V. | 08/29/66 | 1 | 2 |
| Tuten, S. B. | 07/07/66 | 1 | None |
| Underdue, C. | 04/03/67 | 2 | 1 |
| Van Geddings, L. | 07/11/66 | 2 | None |
| Vann, S. | 12/27/66 | 1 | 1 |
| Varn, C. | 12/05/66 | 1 | None |
| Vaughn, E. M. | 01/30/67 | 1 | None |
| Vaughn, W. | 12/12/66 | 2 | 1 |
| Wagers, W. | 06/06/66 | 2 | 1 |
| Walker, A. | 09/20/66 | 2 | 2 |
| Wall, L. | 04/24/67 | 1 | None |
| Wallace, D. | 02/13/67 | 1 | None |
| Wallace, J. | 08/22/66 | 1 | 2 |
| Walling, M. | 02/08/67 | 1 | None |
| Walters, S. | 04/27/67 | 1 | None |
| Walton, E. | 09/12/66 | Mechanic - Class C | 2 |
| Ward, G. | 09/19/66 | 1 | None |
| Ward, H. H. | 11/07/66 | 2 | 1 |
| Ward, L. | 07/18/66 | 1 | None |
| Ward, O. | 07/21/66 | 1 | 2 |
| Washington, E. | 04/24/67 | 1 | 1 |
| Watford, R. | 09/06/66 | 2 | 1 |
| Way, L. | 08/08/66 | 1 | 1 |
| Waynick, T. | 08/01/66 | 1 | None |
| Weatherford, P. | 09/01/66 | 1 | None |
| Weatherly, H. O. | 09/12/66 | Mechanic - Class C | 2 |
| Weatherly, V. L. | 07/18/66 | 1 | None |
| Weathersby, E. | 08/29/66 | 1 | None |
| Weaver, D. | 06/02/67 | 1 | None |
| Weaver, S. M. | 10/03/66 | 1 | 1 |

| Name | Date of Hire | Initial Job Classification | No. of Transfers To Higher Rated Classification |
|---|---|---|---|
| Webb, L. | 07/10/67 | 1 | None |
| Webster, L. | 03/20/67 | 1 | None |
| Welch, A. | 04/12/67 | 2 | 1 |
| Welch, B. | 07/05/67 | 1 | None |
| Welch, B. | 04/27/67 | 1 | 1 |
| Welch, D. | 11/09/66 | 1 | None |
| Welch, E. L. | 07/05/67 | 1 | None |
| Welch, L. M. | 08/01/66 | 1 | None |
| Welch, P. | 01/11/67 | 1 | None |
| Welch, T. | 03/20/67 | 1 | None |
| Welsh, V. | 06/19/67 | 1 | None |
| Wetherby, B. | 09/12/66 | 2 | 5 |
| White, J. | 01/23/67 | 1 | None |
| White, P. | 07/10/67 | 2 | None |
| Wicker, E. | 05/02/66 | Mechanic - Class B | 1 |
| Widener, J. | 01/11/67 | 1 | None |
| Wilkes, B. L. | 08/18/66 | 1 | 1 |
| Willard, T. | 07/25/66 | 1 | None |
| Williams, G. | 06/19/67 | 1 | None |
| Williams, H. M. | 10/04/66 | 2 | None |
| Williams, J. C. | 08/22/66 | 1 | 1 |
| Williamson, B. E. | 07/20/66 | 1 | 4 |
| Williamson, V. M. | 11/09/66 | 1 | None |
| Wilson, B. G. | 08/01/66 | Mechanic - Class C | 2 |
| Wilson, D. | 08/01/66 | 1 | 1 |
| Wilson, D. | 12/05/66 | 1 | None |
| Wilson, D. D. | 08/01/66 | Mechanic - Class C | 2 |
| Wilson, E. | 05/30/67 | 1 | None |
| Wilson, H. | 08/14/66 | 2 | 1 |
| Wilson, J. L. | 09/25/67 | 2 | 1 |
| Windham, G. | 09/26/66 | 1 | None |
| Windham, L. | 11/28/66 | 1 | None |
| Wingate, S. | 06/12/67 | 1 | None |
| Wingo, M. | 11/09/66 | 1 | None |
| Winkles, Jr. E. | 08/01/66 | 2 | 1 |
| Wolfe, S. | 04/24/67 | 1 | None |
| Wood, B. | 05/10/67 | 1 | 1 |
| Wright, R. | 01/09/67 | 1 | None |
| Yates, C. | 05/03/67 | 1 | 1 |

Interrogatory No. 12. Based upon visual observations until after June 1, 1967, and upon records maintained after that time, it is estimated that there was a total of 425 Negroes employed by this Defendant since the opening of the plant until October 1, 1967.

Interrogatory No. 13. Based upon visual observations until after June 1, 1967, and upon records maintained after that time, it is estimated that there was a total of 2,284 white employees employed by this Defendant since the opening of the plant until October 1, 1967.

Interrogatory No. 16. As of October 1, 1967, there were two Negro line inspectors, one technician, one office trainee and one guard.

Interrogatory No. 17. As of October 1, 1967, there were one benefits assistant, six guards, eight general clerks, five inspectors, three assistant supervisors, three clerks, nine line inspectors, two senior clerks, three nurses, ten secretaries, two stenographers, seven factory accounting clerks, one supervisor-payroll, one sergeant-plant security, one maintenance clerk, one store keeper, three technicians, one cost control assistant, two checkers, three senior account clerks, two junior account clerks, one drafting detailer, one senior lead clerk.

Interrogatory No. 19. This Defendant does not have sufficient information upon which to base an answer to this Interrogatory.

Interrogatory No. 20. See Answer to Interrogatory No. 12.

Interrogatory No. 21. 9, 770.

Interrogatory No. 22. 2, 375.

Interrogatory No. 23. 2, 375.

Interrogatory No. 24. This Defendant does not have sufficient information upon which to base an answer to this Interrogatory, except insofar as it is answered in Interrogatory Nos. 8, 10 and 12.

Interrogatory No. 25. This Defendant does not have sufficient information upon which to base an answer to this Interrogatory, except insofar as it is answered in Interrogatory Nos. 11 and 13.

Interrogatory No. 26. No.

Interrogatory No. 27. Class "E" through Class "AA" mechanics.

Interrogatory No. 28. As of September 1, 1966, eight; as of January 1, 1967, seven; as of April 1, 1967, six; and as of June 1, 1967, six.

Interrogatory No. 29. As of September 1, 1966, 50; as of January 1, 1967, 58; as of April 1, 1967, 59; and as of June 1, 1967, 57.

Interrogatory No. 30. All.

Interrogatory No. 31. All employed as craftsmen or skilled workers.

Interrogatory No. 32. This Defendant does not have sufficient information upon which to base an answer to this Interrogatory at any time until after June 1, 1967. As of June 25, 1967, the following Negroes were employed at the following starting hourly wage rates:

| Name | Starting Hourly Wage Rate |
|---|---|
| Wilson, E. | 1.5750 |
| Benjamin, F. | " |
| Williams, B. | " |
| Hilton, L. O. | " |
| McBride, E. | " |
| McFadden, D. | " |
| Frazier, D. L. | " |
| Sanders, S. | " |
| Porter, E. | " |
| Nelson, J. | " |
| Ragin, M. | " |
| Barton, A. C. | " |
| Vaughn, L. J. | " |
| Clark, E. G. | " |
| Bradley, G. | " |
| Pringle, M. | " |
| Vaughn, E. L. | " |
| Mack, C. | " |
| White, B. | " |
| Martin, S. | " |
| White, D. | " |
| Richardson, W. | " |
| Budden, N. | " |
| Spann, W. | " |
| Wilson, T. M. | " |
| Henry, R. M. | " |
| Witherspoon, A. | " |
| Brown, D. M. | " |
| Dawson, J. | " |
| Dees, M. | " |
| Jones, G. | " |
| Hicks, H. | " |
| Robinson, V. | " |
| Evans, D. | " |
| Rivers, J. | " |
| Canty, L. | " |
| Clark, M. F. | " |
| Potts, O. M. | " |
| Sinkler, M. | " |
| Benbow, R. | " |
| Martin, L. | " |
| McCray, T. | " |
| Burns, E. | " |
| Byrd, A. | " |
| Wilson, G. | " |
| Carroll, E. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Greene, R. L. | 1.5750 |
| Massingill, B. | " |
| Murray, A. | " |
| Hart, J. | " |
| Jefferson, J. | " |
| Hilton, E. | " |
| Dinkins, C. | " |
| Burgess, R. | " |
| Johnson, H. | " |
| Brunson, S. | " |
| Ford, M. | " |
| Francis, E. | " |
| Mack, B. | " |
| Wilson, R. | " |
| Postell, S. | " |
| Brunson, V. | " |
| Allen, M. | " |
| Brunson, B. | " |
| Montgomery, A. | " |
| Presha, V. | " |
| Way, H. | " |
| Moses, M. | " |
| McFadden, L. | " |
| Walters, A. | " |
| Drayton, L. E. | " |
| McQuillia, E. | " |
| Walter, O. M. | " |
| Dyson, E. | " |
| McDonald, S. | " |
| Choice, L. | " |
| Harvin, S. | " |
| Greene, V. | " |
| Hodge, M. | " |
| Glover, A. M. | " |
| Barnes, A. | " |
| Miller, M. | " |
| Hammond, C. | " |
| Murray, J. | " |
| Atkinson, A. M. | " |
| Leneau, V. | " |
| Rogers, V. | " |
| Cousar, P. | " |
| Wilder, D. | " |
| Grinnel, I. | " |
| Carter, E. B. | " |
| Williams, B. | " |
| Johnson, M. | " |
| Mills, Q. | " |
| Lawson, M. | " |
| McCray, J. | " |
| Franklin, S. | " |
| Garland, E. | " |
| Holland, E. | " |
| LaGrant, M. | " |
| Stukes, E. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Brown, B. | 1.5750 |
| Solomon, B. | " |
| White, V. | " |
| Wormsby, O. | " |
| Barno, C. | " |
| Jackson, A. | " |
| Benjamin, C. | " |
| Tillie, J. | " |
| Walker, B. | " |
| Stukes, M. | " |
| Washington, J. G. | " |
| Gibson, P. | " |
| Williams, G. | " |
| Dupree, S. | " |
| Ballard, S. | " |
| Greene, L. | " |
| Davis, V. | " |
| Conyers, R. M. | " |
| Dixon, E. | " |
| Cooke, J. | " |
| Chatman, D. | " |
| James M. | " |
| Rollerson, M. | " |
| Hall, E. | " |
| Isaac, J. | " |
| Freeman, M. | " |
| Hazel, L. | " |
| Jefferson, L. | " |
| Moses, L. M. | " |
| Evans, J. M. | " |
| White, M. | " |
| James, Katie | " |
| Evans, B. | " |
| Brunson, A. M. | " |
| Nelson, A. | " |
| Farmer, M. | " |
| Chambers, V. | " |
| Bracey, A. | " |
| Hastie, W. M. | " |
| Goodman, G. | " |
| Clyburn, W. M. | " |
| Sanders, B. | " |
| Thomas, B. | " |
| James, M. | " |
| Harris, R. | " |
| Massingill, H. | " |
| Lesane, W. | " |
| Gadson, H. | " |
| McFadden, J. | " |
| McCant, M. | " |
| Moorer, P. | " |
| Williams, R. | " |
| McDowell, E. | 1.6550 |
| Mouzon, E. M. | " |
| Richardson, B. | " |
| Gillard, R. W. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Kirkland, V. S. | 1.6550 |
| Dawson, L. | " |
| Vareen, J. M. | " |
| Thornbrew, L. | " |
| Thompson, D. | " |
| Grant, R. R. | " |
| McClam, O. M. | " |
| Brogdon, D. A. | " |
| Quattlebaum, E. | " |
| Greene, M. | " |
| Pugh, K. | " |
| McCray, A. | " |
| McFadden, L. | " |
| Washington, E. | " |
| Rhinehart, J. | " |
| Olden, J. | " |
| Chestnut, C. | " |
| Singleton, G. | " |
| Jackson, V. | " |
| Frierson, M. | " |
| Herrington, E. | " |
| Maple, M. | " |
| Kirkland, M. | " |
| Moses, D. | " |
| Moten, M. | " |
| Hodge, H. | " |
| Jones, E. | " |
| Durant, P. | " |
| Hill, A. | " |
| Ballard, E. | " |
| Dinkins, E. | " |
| Burgess, E. | " |
| Brunson, E. | " |
| Walter, H. | " |
| Dicks, A. | " |
| Richardson, M. | " |
| Davis, M. | " |
| Canty, J. | " |
| Davis, B. | " |
| Cousar, B. | " |
| Davis, C. | " |
| Brooks, S. | " |
| Pack, R. L. | " |
| Glover, J. | " |
| Frierson, Q. | " |
| Anderson, S. | " |
| McCoy, M. | " |
| Kennedy, S. | " |
| Nathaniel, G. | " |
| Lewis, S. | " |
| Kinard, E. | " |
| Jacobs, L. | " |
| White, J. | " |
| Durant, J. | " |
| Brown, A. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Cooper, R. | 1.6550 |
| Atkinson, W.C. | " |
| Brown, J. | " |
| Monroe, C. | " |
| Tomlin, L. | " |
| Ragins, H. | " |
| Howard, A. R. | 1.7400 |
| Richburg, D. | " |
| Williams, E. | " |
| Pitts, B. | " |
| Burroughs, J. | " |
| Bennett, M. | " |
| Hampton, D. L. | " |
| Davis, W. | " |
| Benbow, A. | " |
| Butler, P. | " |
| Blyther, W. | " |
| Nixon, E. | " |
| Jackson, L. | " |
| Dukes, H. | " |
| Gillis, J. | " |
| Henry, M. | " |
| Cooper, F. | " |
| Cooper, E. | " |
| Dawson, B. T. | " |
| Croskey, J. | " |
| Neal, R. | " |
| White, E. | " |
| Rogers, P. | " |
| Williams, D. | " |
| Bailey, A. | " |
| Shannon, W. | " |
| McCants, M. | " |
| Singleton, H. | " |
| Mack, J. | " |
| Harvin, J. | " |
| Blanding, G. | " |
| Albert, P. | " |
| Scriven, R. | " |
| Benjamin, J. | " |
| Pumphrey, J. | " |
| Washington, A. | " |
| Mickens, T. O. | 1.8250 |
| Shaw, P. S. | " |
| Abram, R. | " |
| Jones, B. L. | " |
| Howard, C. | " |
| Dennis, J. | " |
| Thames, W. J. | " |
| Nelson, J. | " |
| Pitts, J. R. | " |
| Britton, H. | " |
| Ingram, A. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Cooper, M. | 1.9150 |
| Pringle, J. | " |
| Singleton, M. | " |
| Greene, G. W. | " |
| Harman, W. J. | " |
| Howard, K. | " |
| Canty, R. | " |
| LeSane, W. | " |
| White, T. | " |
| Lemmon, A. | 2.0150 |
| Wilson, M., Jr. | " |
| Grant, H. | " |
| Butler, A. | " |
| Hilton, R. | " |
| Hampton, S. | " |
| Hudson, A. | 2.1200 |
| Wilson, F. | " |
| Canty, S. | 2.2050 |
| Prince, O. | 2.4700 |
| Patterson, W. | " |
| Champion, M. W. | " |
| Lane, H. W. | " |
| Isaac, J. | 2.7300 |

As of July 30, 1967, the following Negroes were employed at the following starting hourly wage rates:

| Name | Starting Hourly Wage Rate |
|---|---|
| Wilson, E. | 1.5750 |
| Benjamin, F. | " |
| Frazier, D. L. | " |
| Williams, B. | " |
| Sanders, S. | " |
| Nelson, J. | " |
| Hilton, L. O. | " |
| Vaughn, L. J. | " |
| Barton, A. C. | " |
| McBride, E. | " |
| McFadden, D. | " |
| Clark, E. G. | " |
| Ragin, M. | " |
| Bradley, G. | " |
| Vaughn, E. L. | " |
| Pringle, M. | " |
| White, D. | " |
| Martin, S. | " |
| Mack, C. | " |
| Richardson, W. | " |
| White, B. | " |
| Wilson, T. M. | " |
| Henry, R. M. | " |
| Budden, N. | " |
| Spann, W. | " |
| Brown, D. M. | " |
| Witherspoon, A. | " |
| Rivers, J. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Dees, M. | 1.5750 |
| Jones, G. | " |
| Dawson, J. | " |
| Sinkler, M. | " |
| Benbow, R. | " |
| Clark, M. F. | " |
| Potts, O. M. | " |
| Burns, E. | " |
| Byrd, A. | " |
| Hicks, H. | " |
| Martin, L. | " |
| McCray, T. | " |
| Robinson, V. | " |
| Jefferson, J. | " |
| Canty, L. | " |
| Carroll, E. | " |
| Evans, D. | " |
| Greene, R. L. | " |
| Johnson, H. | " |
| Brunson, S. | " |
| Wilson, G. | " |
| Ford, M. | " |
| Hart, J. | " |
| Hilton, E. | " |
| Mack, B. | " |
| Francis, E. | " |
| Murray, A. | " |
| Presha, V. | " |
| Way, H. | " |
| Brunson, B. | " |
| Burgess, R. | " |
| Dinkins, C. | " |
| Montgomery, A. | " |
| Wilson, R. | " |
| Postell, S. | " |
| Brunson, V. | " |
| Walter, O. M. | " |
| Dyson, E. | " |
| Allen, M. | " |
| McQuillia, E. | " |
| Walters, A. | " |
| Drayton, L. E. | " |
| Moses, M. | " |
| Choice, L. | " |
| McFadden, L. | " |
| Barnes, A. | " |
| Miller, M. | " |
| Harvin, S. | " |
| Greene, V. | " |
| Hodge, M. | " |
| McDonald, S. | " |
| Rogers, V. | " |
| Glover, A. M. | " |
| Wilder, D. | " |
| Cousar, P. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Johnson, M. | 1.5750 |
| Garland, E. | " |
| Mills, Q. | " |
| Carter, E. B. | " |
| Atkinson, A. M. | " |
| Leneau, V. | " |
| Williams, B. | " |
| Ramsey, E. | " |
| Hammond, C. | " |
| Lawson, M. | " |
| McCray, J. | " |
| White, V. | " |
| Brown, B. | " |
| Solomon, B. | " |
| Grinnel, I. | " |
| Washington, J. G. | " |
| Gibson, P. | " |
| Franklin, S. | " |
| Barno, C. | " |
| Wormsby, O. | " |
| Williams, G. | " |
| Greene, L. | " |
| Stukes, M. | " |
| James, M. | " |
| Stukes, E. | " |
| Conyers, R. M. | " |
| Dixon, E. | " |
| Holland, E. | " |
| LaGrant, M. | " |
| Jackson, A. | " |
| Rollerson, M. | " |
| Cooke, J. | " |
| Chatman, D. | " |
| Benjamin, C. | " |
| Tillie, J. | " |
| Freeman, M. | " |
| Hazel, L. | " |
| Davis, V. | " |
| Brunson, A. M. | " |
| James, K. | " |
| White, M. | " |
| Dupree, S. | " |
| Nelson, A. | " |
| Ballard, S. | " |
| Hall, E. | " |
| Moses, L. M. | " |
| Isaac, J. | " |
| Clyburn, W. M. | " |
| Evans, B. | " |
| Evans, J. M. | " |
| Hastie, W. M. | " |
| Jefferson, L. | " |
| James, M. | " |
| Sanders, B. | " |
| Harris, R. | " |
| Davis, A. | " |
| James, M. R. | " |
| Farmer, M. | " |
| Bracey, A. | " |
| Chambers, V. | " |
| Goodman, G. | " |
| Wheeler, S. | " |
| Singletary, B. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Lesane, W. | 1.5750 |
| Massingill, H. | " |
| Mouzon, E. M. | 1.6550 |
| Richardson, B. | " |
| Kirkland, V. S. | " |
| Gillard, R. W. | " |
| Vareen, J. M. | " |
| Thompson, D. | " |
| Brogdon, D. A. | " |
| Dawson, L. | " |
| McClam, O. M. | " |
| Grant, R. R. | " |
| Quattlebaum, E. | " |
| Greene, M. | " |
| Pugh, K. | " |
| McFadden, L. | " |
| McCray, A. | " |
| Chestnut, C. | " |
| Olden, J. | " |
| Kirkland, M. | " |
| Moses, D. | " |
| Frierson, M. | " |
| Massingill, B. | " |
| Rhinehart, J. | " |
| Jackson, V. | " |
| Herrington, E. | " |
| Moten, M. | " |
| Maple, M. | " |
| Jones, E. | " |
| Durant, P. | " |
| Dinkins, E. | " |
| Ballard, E. | " |
| Burgess, E. | " |
| Brunson, E. | " |
| Dicks, A. | " |
| Hodge, H. | " |
| Hill, A. | " |
| Canty, J. | " |
| Davis, M. | " |
| Brooks, S. | " |
| Cousar, B. | " |
| Walter, H. | " |
| Glover, J. | " |
| Richardson, M. | " |
| Davis, B. | " |
| Anderson, S. | " |
| Pack, R. L. | " |
| Kinard, E. | " |
| Frierson, Q. | " |
| Walker, B. | " |
| Nathaniel, G. | " |
| Kennedy, S. | " |
| Lewis, S. | " |
| Singleton, T. | " |
| Brock, J. | " |
| Fortune, I. | " |
| Lee, J. | " |
| Solomon, T. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Gadson, H. | 1.6550 |
| McCant, M. | " |
| Atkinson, W. C. | " |
| Brown, A. | " |
| Cooper, R. | " |
| McFadden, J. | " |
| Durant, J. | " |
| Moorer, P. | " |
| Monroe, C. | " |
| Ragins, H. | " |
| Tomlin, L. | " |
| Brown, J. | " |
| Williams, R. | " |
| Jacobs, L. | " |
| White, J. | " |
| Chatman, J. | " |
| Maple, L. | " |
| Howard, A. R. | 1.7400 |
| Richburg, D. | " |
| Williams, E. | " |
| Pitts, B. | " |
| Butler, P. | " |
| Jackson, L. | " |
| Blyther, W. | " |
| Howard, C. | " |
| Nixon, E. | " |
| Dukes, H. | " |
| Gillis, J. | " |
| Harman, W. J. | " |
| Cooper, F. | " |
| Henry, M. | " |
| Dawson, B. T. | " |
| Croskey, J. | " |
| White, E. | " |
| Neal, R. | " |
| McCants, M. | " |
| Shannon, W. | " |
| Rogers, P. | " |
| Mack, J. | " |
| Blanding, G. | " |
| Harvin, J. | " |
| Singleton, H. | " |
| Scriven, R. | " |
| Albert, P. | " |
| Benjamin, J. | " |
| Pumphrey, J. | " |
| Washington, A. | " |
| Shaw, P. S. | 1.8250 |
| Mickens, T. O. | " |
| Abram, R. | " |
| Jones, B. L. | " |
| Dennis, J. | " |
| Pitts, J. R. | " |
| Thames, W. J. | " |
| Nelson, J. | " |
| Britton, H. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Cooper, M. | 1.9150 |
| Singleton, M. | " |
| Pringle, J. | " |
| Greene, G. W. | " |
| Canty, R. | " |
| Lesane, W. | " |
| Howard, K. | " |
| Lemmon, A. | 2.0150 |
| Grant, H. | " |
| Butler, A. | " |
| Wilson, M., Jr. | " |
| Hampton, S. | " |
| Hudson, A. | 2.1200 |
| Cooper, E. | " |
| Wilson, F. | " |
| Canty, S. | 2.2050 |
| Prince, O. | 2.4700 |
| Patterson, W. | " |
| Champion, M. W. | " |
| Lane, H. W. | " |
| Isaac, J. | 2.7300 |

As of August 27, 1967, the following Negroes were employed at the following starting hourly wage rates:

| Name | Starting Hourly Wage Rate |
|---|---|
| Wilson, E. | 1.5750 |
| Benjamin, F. | " |
| Williams, B. | " |
| Hilton, L. O. | " |
| Frazier, D. L. | " |
| McBride, E. | " |
| McFadden, D. | " |
| Sanders, S. | " |
| Nelson, J. | " |
| Ragin, M. | " |
| Vaughn, L. J. | " |
| Barton, A. C. | " |
| Bradley, G. | " |
| Clark, E. G. | " |
| Pringle, M. | " |
| Mack, C. | " |
| White, D. | " |
| Martin, S. | " |
| White, B. | " |
| Richardson, W. | " |
| Budden, N. | " |
| Spann, W. | " |
| Henry, R. M. | " |
| Wilson, T. M. | " |
| Witherspoon, A. | " |
| Dees, M. | " |
| Jones, G. | " |
| Brown, D. M. | " |
| Dawson, J. | " |
| Hicks, H. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Robinson, V. | 1.5750 |
| Canty, L. | " |
| Rivers, J. | " |
| Evans, D. | " |
| Sinkler, M. | " |
| Benbow, R. | " |
| Byrd, A. | " |
| Burns, E. | " |
| Clark, M. F. | " |
| Potts, O. M. | " |
| Martin, L. | " |
| Wilson, G. | " |
| McCray, T. | " |
| Hart, J. | " |
| Jefferson, J. | " |
| Hilton, E. | " |
| Carroll, E. | " |
| Murray, A. | " |
| Greene, R. L. | " |
| Johnson, H. | " |
| Brunson, S. | " |
| Dinkins, C. | " |
| Ford, M. | " |
| Wilson, R. | " |
| Postell, S. | " |
| Mack, B. | " |
| Francis, E. | " |
| Brunson, V. | " |
| Presha, V. | " |
| Brunson, B. | " |
| Allen, M. | " |
| Way, H. | " |
| Montgomery, A. | " |
| Moses, M. | " |
| McFadden, L. | " |
| Walter, O. M. | " |
| Dyson, E. | " |
| McQuillia, E. | " |
| Walters, A. | " |
| Drayton, L. E. | " |
| Harvin, S. | " |
| Greene, V. | " |
| Hodge, M. | " |
| McDonald, S. | " |
| Choice, L. | " |
| Glover, A. M. | " |
| Barnes, A. | " |
| Miller, M. | " |
| Atkinson, A. M. | " |
| Leneau, V. | " |
| Ramsey, E. | " |
| Rogers, V. | " |
| Williams, B. | " |
| Hammond, C. | " |
| Grinnel, I. | " |
| Wilder, D. | " |
| Cousar, P. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Johnson, M. | 1.5750 |
| Garland, E. | " |
| Franklin, S. | " |
| Mills, Q. | " |
| Carter, E. B. | " |
| Stukes, E. | " |
| Holland, E. | " |
| Lagrant, M. | " |
| McCray, J. | " |
| Lawson, M. | " |
| Jackson, A. | " |
| Solomon, B. | " |
| Brown, B. | " |
| Gibson, P. | " |
| Tillie, J. | " |
| Barno, C. | " |
| Wormsby, O. | " |
| Davis, V. | " |
| Greene, L. | " |
| Williams, G. | " |
| Dupree, S. | " |
| Stukes, M. | " |
| James, M. | " |
| Dixon, E. | " |
| Conyers, R. M. | " |
| Ballard, S. | " |
| Rollerson, M. | " |
| Hall, E. | " |
| Cooke, J. | " |
| Chatman, D. | " |
| Moses, L. M. | " |
| Freeman, M. | " |
| Hazel, L. | " |
| Isaac, J. | " |
| James, K. | " |
| White, M. | " |
| Evans, B. | " |
| Brunson, A. M. | " |
| Evans, J. M. | " |
| Jefferson, L. | " |
| Nelson, A. | " |
| Clyburn, W. M. | " |
| Bracey, A. | " |
| Hastie, W. M. | " |
| Chambers, V. | " |
| James, M. | " |
| Sanders, B. | " |
| Goodman, G. | " |
| Harris, R. | " |
| Wheeler, S. | " |
| Davis, A. | " |
| Singletary, B. | " |
| James, M. R. | " |
| Massingill, H. | " |
| Richardson, B. | 1.6550 |
| Gillard, R. W. | " |
| Mouzon, E. M. | " |
| Kirkland, V. S. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Vareen, J. M. | 1.6550 |
| Dawson, L. | " |
| Thompson, D. | " |
| McClam, O. M. | " |
| Grant, R. R. | " |
| Brogdon, D. A. | " |
| Quattlebaum, E. | " |
| Pugh, K. | " |
| Greene, M. | " |
| McFadden, L. | " |
| McCray, A. | " |
| Rhinehart, J. | " |
| Chustnut, C. | " |
| Olden, J. | " |
| Jackson, V. | " |
| Herrington, E. | " |
| Kirkland, M. | " |
| Moses, D. | " |
| Massingill, B. | " |
| Frierson, M. | " |
| Maple, M. | " |
| Moten, M. | " |
| Burgess, R. | " |
| Jones, E. | " |
| Hodge, H. | " |
| Ballard, E. | " |
| Dinkins, E. | " |
| Durant, P. | " |
| Hill, A. | " |
| Burgess, E. | " |
| Brunson, E. | " |
| Dicks, A. | " |
| Walter, H. | " |
| Richardson, M. | " |
| Canty, J. | " |
| Davis, B. | " |
| Davis, M. | " |
| Brooks, S. | " |
| Pack, R. L. | " |
| Cousar, B. | " |
| Glover, J. | " |
| Frierson, Q. | " |
| Anderson, S. | " |
| White, V. | " |
| Kinard, E. | " |
| Benjamin, C. | " |
| Kennedy, S. | " |
| Walker, B. | " |
| Nathaniel, G. | " |
| Lewis, S. | " |
| Gadson, H. | " |
| McCant, M. | " |
| McFadden, J. | " |
| Moorer, P. | " |
| Durant, J. | " |
| Monroe, C. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Ragins, H. | 1.6550 |
| Williams, R. | " |
| Tomlin, L. | " |
| Jacobs, L. | " |
| White J. | " |
| Maple, L. | " |
| Chatman, J. | " |
| Howard, A. R. | 1.7400 |
| Richburg, D. | " |
| Pitts, B. | " |
| Butler, P. | " |
| Jackson, L. | " |
| Blyther, W. | " |
| Howard, C. | " |
| Nixon, E. | " |
| Dukes, H. | " |
| Gillis, J. | " |
| Harman, W. J. | " |
| Henry, M. | " |
| Atkinson, W. C. | " |
| Croskey, J. | " |
| Dawson, B. T. | " |
| Cooper, F. | " |
| Brown, A. | " |
| White, E. | " |
| Cooper, R. | " |
| Neal, R. | " |
| McCants, M. | " |
| Shannon, W. | " |
| Rogers, P. | " |
| Singleton, H. | " |
| Mack, J. | " |
| Blanding, G. | " |
| Lesane, W. | " |
| Harvin, J. | " |
| Scriven, R. | " |
| Albert, P. | " |
| Pumphrey, J. | " |
| Benjamin, J. | " |
| Washington, A. | " |
| Mickens, T. O. | 1.8250 |
| Shaw, P.S. | " |
| Abram, R. | " |
| Jones, B. L. | " |
| Dennis, J. | " |
| Pitts, J. R. | " |
| Thames, W. J. | " |
| Nelson, J. | " |
| Britton, H. | " |
| Cooper, M. | 1.9150 |
| Singleton, M. | " |
| Pringle, J. | " |
| Greene, G. W. | " |
| Canty, R. | " |
| Lesane, W. | " |
| Howard, K. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Lemmon, A. | 2.0150 |
| Grant, H. | " |
| Wilson, M., Jr. | " |
| Butler, A. | " |
| Hampton, S. | " |
| Hudson, A. | 2.1200 |
| Cooper, E. | " |
| Wilson, F. | " |
| Canty, S. | 2.4700 |
| Prince, O. | " |
| Patterson, W. | " |
| Champion, M. W. | " |
| Lane, H. W. | " |
| Isaac, J. | 2.7300 |

As of September 30, 1967, the following Negroes were employed at the following starting hourly wage rates:

| Name | Starting Hourly Wage Rate |
|---|---|
| Dixon, E. | 1.5750 |
| Ballard, S. | " |
| White, B. | " |
| Lawson, M. | " |
| McCray, J. | " |
| James, K. | " |
| Evans, D. | " |
| Bracey, A. | " |
| Sinkler, M. | " |
| Benbow, R. | " |
| McBride, E. | " |
| McFadden, D. | " |
| Dyson, E. | " |
| McFadden, L. | " |
| Clyburn, W. M. | " |
| Ford, M. | " |
| Dinkins, C. | " |
| Postell, S. | " |
| Clea, L. | " |
| Martin, S. | " |
| White, D. | " |
| Pringle, M. | " |
| Williams, B. | " |
| Hammond, C. | " |
| Atkinson, A. M. | " |
| McCray, T. | " |
| Hart, J. | " |
| Hilton, E. | " |
| Jefferson, J. | " |
| Hazel, L. | " |
| Freeman, M. | " |
| Richardson, W. | " |
| Dupree, S. | " |
| Barno, C. | " |
| Wormsby, O. | " |
| Goodman, G. | " |
| Williams, B. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Conyers, R. M. | 1.5750 |
| McCray, A. | " |
| Ragin, M. | " |
| Wilson, E. | " |
| Benjamin, F. | " |
| Francis, E. | " |
| Brunson, V. | " |
| Massingill, B. | " |
| Murray, A. | " |
| Vaughn, E. | " |
| Bradley, G. | " |
| Dees, M. | " |
| Jones, G. | " |
| Holland, E. | " |
| Mills, Q. | " |
| Carter, E. B. | " |
| Hilton, L. O. | " |
| Rollerson, M. | " |
| Robinson, V. | " |
| Barton, A. C. | " |
| Montgomery, A. | " |
| Carroll, E. | " |
| Singletary, B. | " |
| Mack, C. | " |
| Walter, H. | " |
| Witherspoon, A. | " |
| White, M. | " |
| Brunson, A. M. | " |
| Evans, J. M. | " |
| Spann, W. | " |
| Budden, N. | " |
| Stukes, M. | " |
| James, M. | " |
| Greene, L. | " |
| Williams, G. | " |
| Davis, V. | " |
| Stukes, E. | " |
| Johnson, M. | " |
| Franklin, S. | " |
| Garland, E. | " |
| Hicks, H. | " |
| Vaughn, L. J. | " |
| Way, H. | " |
| Brunson, B. | " |
| Allen, M. | " |
| Presha, V. | " |
| Tillie, J. | " |
| Brown, B. | " |
| Chambers, V. | " |
| Clark, M. F. | " |
| Potts, O. M. | " |
| Drayton, L. E. | " |
| Walter, O. M. | " |
| Jackson, A. | " |
| Solomon, B. | " |
| James, M. R. | " |
| Frazier, D. L. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Mouzon, E. M. | 1.5750 |
| Moses, L. M. | " |
| Chatman, D. | " |
| Rivers, J. | " |
| Clark, E. G. | " |
| Moses, M. | " |
| Johnson, H. | " |
| Brunson, S. | " |
| Leneau, V. | " |
| Rogers, V. | " |
| Barnes, A. | " |
| Miller, M. | " |
| Jefferson, L. | " |
| Burns, E. | " |
| Byrd, A. | " |
| Martin, L. | " |
| Wilson, G. | " |
| Nelson, J. | " |
| Sanders, S. | " |
| McDonald, S. | " |
| Greene, V. | " |
| Hodge, M. | " |
| Harvin, S. | " |
| Choice, L. | " |
| McQuillia, E. | " |
| Walters, A. | " |
| Cooke, J. | " |
| Hall, E. | " |
| Henry, R. M | " |
| Wilson, T. M. | " |
| Gibson, P. | " |
| Grinnel, I. | " |
| Cousar, P. | " |
| Ramsey, E. | " |
| Hastie, W. M. | " |
| Brown, D. M. | " |
| Nelson, A. | " |
| Dawson, J. | " |
| Mack, B. | " |
| Quattlebaum, E. | 1.6550 |
| Ballard, E. | " |
| Dinkins, E. | " |
| Burgess, R. | " |
| Brooks, S. | " |
| Davis, B. | " |
| Herrington, E. | " |
| Kirkland, M. | " |
| Vareen, J. M. | " |
| Burgess, E. | " |
| Brunson, E. | " |
| Pugh, K. | " |
| McClam, O. M. | " |
| Glover, J. | " |
| Frierson, Q. | " |
| Richardson, B. | " |
| McFadden, L. | " |
| Jones, E. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Frierson, M. | 1.6550 |
| Maple, M. | " |
| Richardson, M. | " |
| Walker, B. | " |
| Nathaniel, G. | " |
| Grant, R. R. | " |
| Gillard, R. W. | " |
| Davis, A. | " |
| Moses, D. | " |
| Brogdon, D. A. | " |
| Benjamin, C. | " |
| White, V. | " |
| Kirkland, V. S. | " |
| Rhinehart, J. | " |
| Anderson, S. | " |
| Hodge, H. | " |
| Moten, M. | " |
| Dawson, L. | " |
| Canty, J. | " |
| Chestnut, C. | " |
| Harris, R. | " |
| Olden, J. | " |
| Thompson, D. | " |
| Dicks, A. | " |
| Hill, A. | " |
| Greene, M. | " |
| Lewis, S. | " |
| Kennedy, S. | " |
| Kinard, E. | " |
| Pack, R. L. | " |
| Cousar, B. | " |
| Davis, M. | " |
| McFadden, J. | " |
| Jacobs, L. | " |
| Williams, R. | " |
| White, J. | " |
| Moorer, P. | " |
| Gadson, H. | " |
| Ragins, H. | " |
| Maple, L. | " |
| Chatman, J. | " |
| McCant, M. | " |
| Albert, P. | " |
| Spann, J. | 1.7400 |
| Burroughs, C. | " |
| Richburg, D. | " |
| Pitts, B. | " |
| Howard, A. R. | " |
| White, E. | " |
| Blanding, G. | " |
| Harvin, J. | " |
| McFadden, H. | " |
| Henry, M. | " |
| Lesane, W. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Benjamin, J. | 1.7400 |
| Pumphrey, J. | " |
| Gillis, J. | " |
| Cooper, R. | " |
| Atkinson, W. C. | " |
| McCants, M. | " |
| Washington, A. | " |
| Howard, C. | " |
| Nixon, E. | " |
| Dukes, H. | " |
| Brown, A. | " |
| Shannon, W. | " |
| Rogers, P. | " |
| Monroe, C. | " |
| Cooper, F. | " |
| Jackson, L. | " |
| Blyther, W. | " |
| Harman, W. J. | " |
| Croskey, J. | " |
| Dawson, B. T. | " |
| Neal, R. | " |
| Butler, P. | " |
| Durant, J. | " |
| Scriven, R. | " |
| Singleton, H. | " |
| Mack, J. | " |
| Shaw, P. S. | 1.8250 |
| Mickens, T. O. | " |
| Abram, R. | " |
| Nelson, J. | " |
| Jones, B. L. | " |
| Pitts, J. R. | " |
| Thames, W. J. | " |
| Britton, H. | " |
| Dennis, J. | " |
| Greene, G. W. | 1.9150 |
| Singleton, M. | " |
| Pringle, J. | " |
| Canty, R. | " |
| Cooper, M. | " |
| Lesane, W. | " |
| Howard, K. | " |
| Lemmon, A. | 2.0150 |
| Wilson, Mack, Jr. | " |
| Butler, A. | " |
| Hampton, S. | " |
| Grant, H. | " |
| Hudson, A. | 2.1200 |
| Wilson, F. | " |
| Cooper, E. | " |
| Lane, H. W. | 2.4700 |
| Champion, M. W. | " |
| Patterson, W. | " |
| Prince, O. | " |
| Canty, S. | " |
| Isaac, J. | 2.7300 |

Interrogatory No. 33. This Defendant does not have sufficient information upon which to base an answer to this interrogatory at any time until after June 1, 1967. As of June 25, 1967, the following Whites were employed at the following starting hourly wage rates:

| Name | Starting Hourly Wage Rate |
|---|---|
| Atkinson, J. B. | 1.5750 |
| Timmons, D. | " |
| Dew, P. | " |
| Boykin, A. | " |
| Cook, B. | " |
| Bridgeman, C. | " |
| Brown, L. | " |
| Huggins, O. D. | " |
| Hearrell, M. M. | " |
| Hickson, M. C. | " |
| Hornsby, R. K. | " |
| Britt, L. | " |
| Geddings, M. S. | " |
| Carnes, B. | " |
| Hudson, V. | " |
| Mixon, D. C. | " |
| McIlvain, J. | " |
| Medlin, N. A. | " |
| Callahan, D. L. | " |
| Floyd, D. | " |
| Geddings, H. | " |
| Geddings, H. | " |
| Jeffords, R. L. | " |
| Deas, L. B. | " |
| Miles, R. H. | " |
| Melton, M. | " |
| Milam, E. L. | " |
| Meacham, R. G. | " |
| Mooneyhan, E. L. | " |
| Moore, P. N. | " |
| Peavy, M. J. | " |
| Rogers, R. | " |
| Reaves, P. E. | " |
| Norris, L. L. | " |
| Oxendine, D. M. | " |
| Boykin, F. B. | " |
| Taylor, B. | " |
| Avins, L. | " |
| Avins, D. M. | " |
| Avins, M. | " |
| Timmons, M. | " |
| Richardson, L. | " |
| Tuten, S. B. | " |
| Tolbert, A. L. | " |
| Carter, M. A. | " |
| Cribb, I. M. | " |
| Driggers, M. E. | " |
| Arrants, B. A. | " |
| Atkinson, M. L. | " |
| Avins, J. P. | " |
| Baker, B. L. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Benenhaley, N. | 1.5750 |
| Teague, H. | " |
| Neal, G. C. | " |
| Stephenson, H. M. | " |
| Weatherly, V. L. | " |
| Jones, W. M. | " |
| McGee, B. A. | " |
| Loghing, A. E. | " |
| Oxendine, L. | " |
| McDearmon, M. M. | " |
| Wilson, G. | " |
| Viavoda, J. B. | " |
| Atkinson, L. H. | " |
| Holloman, V. D. | " |
| Barnett, J. R. | " |
| Baker, C. | " |
| Evans, B. | " |
| Bryant, P. H. | " |
| Coker, L. M. | " |
| Coker, L. L. | " |
| Tyler, K. | " |
| Barton, S. V. | " |
| Thames, R. | " |
| Blankenship, A. | " |
| Hopkins, C. L. | " |
| Galloway, D. R. | " |
| Turner, S. | " |
| Hodge, J. | " |
| Thigpen, D. | " |
| Boyce, J. | " |
| Willard, T. | " |
| Taylor, B. L. | " |
| Holcomb, S. R. | " |
| Hancock, J. C. | " |
| Geddings, R. | " |
| Geddings, B. | " |
| White, J. | " |
| Welch, L. M. | " |
| Jackson, M. E. | " |
| Williams, L. A. | " |
| Holladay, A. B. | " |
| Hostetler, H. | " |
| Buckner, J. | " |
| Waynick, T. | " |
| Snow, L. A. | " |
| Saxon, M. | " |
| Gainey, D. I. | " |
| Atkinson, L. | " |
| Fann, L. | " |
| Ardis, P. | " |
| McLeod, J. C. | " |
| Dunn, M. | " |
| Hudson, P. | " |
| Way, L. | " |
| Godwin, D. | " |
| Jordan, M. E. | " |
| Lynch, M. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Brettelle, G. | 1.5750 |
| Purvis, J. | " |
| Christmas, G. | " |
| Hodge, J. | " |
| Lovelace, F. | " |
| Garrison, J. | " |
| Geddings, D. | " |
| Parker, G. | " |
| Holloman, M. | " |
| Coker, J. | " |
| James, G. | " |
| Rodgers, F. | " |
| Jeffords, M. D. | " |
| Timmons, I. M. | " |
| Copeland, L. | " |
| Kelley, G. D. | " |
| Baker, B. D. | " |
| Gowdy, D. H. | " |
| Frierson, A. | " |
| McMickell, M. | " |
| Driggers, J. H. | " |
| Ward, G. | " |
| Geddings, L. | " |
| Jernigan, Y. | " |
| Gainey, B. | " |
| Hardee, M. J. | " |
| Morris, S. | " |
| Morris, J. | " |
| Cranford, R. | " |
| Russell, R. L. | " |
| Hodge, M. E. | " |
| Coffey, P. A. | " |
| Carraway, B. K. | " |
| Brown, F. D. | " |
| McElveen, T. | " |
| Huntley, M. | " |
| Browder, S. | " |
| Weatherford, P. | " |
| Frierson, D. | " |
| Geddings, C. | " |
| Ray, E. | " |
| Cooper, B. | " |
| Porter, M. | " |
| Dubose, N. | " |
| Shoemake, A. | " |
| Gardner, M. | " |
| Fowler, S. | " |
| Baker, L. | " |
| Smith, M. | " |
| McIntosh, M. | " |
| Davis, P. S. | " |
| Winter, H. | " |
| Richardson, W. | " |
| Grumble, R. | " |
| Stephens, M. | " |
| Long, T. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Weathersby, E. | 1.5750 |
| Geddings, T. | " |
| Frederick, M. | " |
| Poole, M. | " |
| Turner, L. | " |
| Blackwell, A. | " |
| Page, G. | " |
| Galloway, E. | " |
| Raines, S. | " |
| Culick, N. | " |
| Dewitt, E. | " |
| Mixon, E. | " |
| Olsen, K, | " |
| Miller, S. | " |
| Floyd, B. | " |
| Coulter, R. | " |
| Turner, S. | " |
| Geddings, M. | " |
| Radcliff, A. | " |
| Gonzales, R. | " |
| Roberson, G. | " |
| Bryant, L. | " |
| Currie, D. A. | " |
| Jordan, R. | " |
| Chambers, C. | " |
| Smith, M. R. | " |
| McLeod, D. | " |
| Amerson, A. | " |
| Mims, L. B. | " |
| Mims, C. | " |
| Hodge, L. | " |
| Spivey, M. | " |
| Coker, S. | " |
| Bryant, D. | " |
| Stokes, B. | " |
| Anderson, J. | " |
| Hodge, L. N. | " |
| Humphries, J. | " |
| Jackson, R. | " |
| Hensley, M. | " |
| Stafford, B. | " |
| Jones, T. | " |
| Hardin, D. | " |
| Ray, V. | " |
| Creecy, C. E. | " |
| Harrington, R. | " |
| Holmes, V. | " |
| Hyatt, P. | " |
| Windham, G. | " |
| Graham, M. | " |
| Floyd, V. C. | " |
| Jackson, E. | " |
| Carrington, S. | " |
| Moore, P. | " |
| Cribb, L. | " |
| Hurst, M. | " |
| Franquet, H. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Geddings, A. | 1.5750 |
| Hodge, M. C. | " |
| Christmas, L. | " |
| Goddard, R. | " |
| Nunnery, A. | " |
| Lambert, S. | " |
| Ray, S. | " |
| Watts, E. L. | " |
| Miles, A. | " |
| Player, A. M. | " |
| Cook, F. | " |
| Cribb, S. | " |
| Wingo, M. | " |
| Wilson, L. | " |
| Stewart, C. | " |
| Spires, W. | " |
| Kieft, B. | " |
| Pittman, L. | " |
| Quick, E. | " |
| Donaldson, M. | " |
| Bramlett, V. | " |
| Morris, P. | " |
| Welch, D. | " |
| Williamson, V. M. | " |
| Brown, B. | " |
| Grainger, M. | " |
| Farr, V. | " |
| Poston, M. | " |
| Atkinson, R. | " |
| Morton, P. | " |
| Crosby, P. | " |
| Hodge, R. | " |
| Johnson, J. | " |
| Brooks, J. | " |
| Coker, T. | " |
| Galloway, M. R. | " |
| Ray, R. | " |
| McClam, L. | " |
| Windham, L. | " |
| Jackson, F. | " |
| Himes, M | " |
| Cain, M. | " |
| Lair, J. | " |
| Webster, L. | " |
| Friel, L. | " |
| Broach, J. A. | " |
| Davis, F. | " |
| Rodgers, W. | " |
| Sharp, P. | " |
| Moye, J. | " |
| Chambers, E. | " |
| Smith, J. | " |
| Carter, E. | " |
| Brewer, F. | " |
| Gainey, S. | " |
| Gause, E. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Brown, F. | 1.5750 |
| Allen, M. W. | " |
| White, M. | " |
| Brewer, B. | " |
| Wilson, D. | " |
| Turner, L. | " |
| Hudson, D. | " |
| Carter, M. G. | " |
| Sutterfield, E. | " |
| Suttles, D. | " |
| Baker, J. | " |
| Green, J. | " |
| Norris, G. | " |
| Garcia, I. B. | " |
| Welch, F. | " |
| Lloyd, P. | " |
| Howard, C. | " |
| Varn, C. | " |
| Phillips, M. R. | " |
| Hardee, G. | " |
| Hall, E. | " |
| Ross, W. | " |
| Bartlette, C. | " |
| Harper, J. | " |
| Geddings, M. A. | " |
| Briggs, M. | " |
| Hickman, M. | " |
| Payne, E. | " |
| Jones, M. | " |
| Floyd, F. | " |
| Shorter, L. | " |
| Baughn, B. | " |
| Buchanan, E. | " |
| Adams, C. | " |
| Wannamaker, A. | " |
| Samford, G. | " |
| Yonson, J. | " |
| Baker, R. | " |
| Goff, B. | " |
| Tobias, A. | " |
| Larkins, V. | " |
| Oxendine, B. | " |
| Strickland, R. | " |
| Gwody, N. | " |
| Oxendine, B. | " |
| Brown, M. | " |
| Dickson, J. E. | " |
| Frazier, N. | " |
| Ballard, E. | " |
| Penley, C. | " |
| Batchelder, E. | " |
| Lambert, O. | " |
| Benehaley, E. | " |
| Tester, S. | " |
| James, H. | " |
| Branham, E. | " |
| Frye, R. | " |
| Matthews, I. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Vann, S. | 1.5750 |
| Helsel, M. | " |
| Kivett, B. | " |
| Lee, B. | " |
| Holt, M. | " |
| Benenhaley, E. | " |
| Tidwell, D. | " |
| Layton, D. | " |
| Coleman, B. | " |
| Huggins, B. | " |
| Turner, M. | " |
| Bramlette, H. | " |
| Cox, D. | " |
| Tyler, L. | " |
| Branham, M. A. | " |
| Rodriguez, E. | " |
| Tomlinson, J. | " |
| Richburg, L. | " |
| Floyd, N. | " |
| Beard, A. | " |
| Dollard, J. | " |
| Ross, J. | " |
| Smith, T. | " |
| McLeod, I. | " |
| Welch, H. | " |
| Roberts, G. | " |
| Gudson, C. | " |
| Morris, M. | " |
| Prine, E. | " |
| Boling, W. | " |
| Gieseler, B. | " |
| Lewis, C. | " |
| McAllister, A. | " |
| Griffin, N. | " |
| Drew, B. | " |
| Frye, E. | " |
| Ardis, B. | " |
| Johnson, A. | " |
| Bradley, H. | " |
| Reynolds, C. | " |
| Sando, M. | " |
| Doss, M. | " |
| Wright, R. | " |
| Reynolds, S. | " |
| Quattlebaum, B. | " |
| Kornegay, R. | " |
| Huggins, C. A. | " |
| Geddings, L. | " |
| Prescott, M. | " |
| Driggers, B. | " |
| Snipes, L. | " |
| Purvis, S. | " |
| Jones, A. | " |
| Welch, P. | " |
| Wall, S. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Widener, J. | 1.5750 |
| Hutson, M. | " |
| Amerson, L. | " |
| Player, L. | " |
| Hill, S. | " |
| Oxendine, A. M. | " |
| Green, S. | " |
| Baxter, P. | " |
| Kegley, S. | " |
| Beard, W. R. | " |
| Farmer, J. | " |
| White, J. | " |
| Burnett, M. | " |
| Galloway, J. | " |
| Johnson, M. | " |
| Amerson, S. | " |
| Sargent, M. | " |
| Bell, O. | " |
| Loftis, T. | " |
| Brown, E. L. | " |
| Hall, H. | " |
| Baker, F. | " |
| McCoy, S. | " |
| Browder, R. | " |
| Blackmon, B. | " |
| Brewer, V. | " |
| Bryant, V. | " |
| Philemon, R. | " |
| Scarborough, D. | " |
| Walling, M. | " |
| Anderson, B. | " |
| Christmas, M. | " |
| Haddock, F. | " |
| Bruce, A. | " |
| Moorer, A. | " |
| Price, I. N. | " |
| Matthews, L. | " |
| Hulon, R. | " |
| Kruger, L. | " |
| Baker, M. | " |
| Gregory, E. | " |
| Stidd, C. | " |
| Wallace, D. | " |
| Easterling, P. | " |
| Irvine, J. | " |
| Marshall, F. | " |
| Osborne, P. | " |
| Mathis, P. | " |
| Piver, F. | " |
| Lee, C. | " |
| Loff, H. | " |
| Bland, M. | " |
| Garner, A. | " |
| Brown, R. | " |
| Dunlap, N. | " |
| McKnight, S. | " |
| Geddings, C. J. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Grooms, O. | 1.5750 |
| Outlaw, D. | " |
| Johnson, L. | " |
| Jackson, M. | " |
| Alexander, C. | " |
| Campbell, V. | " |
| Poole, M. | " |
| Belcher, A. | " |
| Budeen, J. | " |
| King, V. | " |
| Turner, G. | " |
| Lloyd, V. | " |
| Ardis, E. | " |
| Ayers, V. | " |
| Banks, S. | " |
| Langensiepen, E. | " |
| Collins, B. | " |
| Brown, J. | " |
| Howard, E. | " |
| Charles, L. | " |
| Sanders, M. | " |
| Scott, J. | " |
| Ridgeway, J. | " |
| Tisdale, R. | " |
| Huffman, J. | " |
| Manning, B. | " |
| Porter, V. | " |
| Hutson, P. | " |
| Lowry, M. | " |
| Melton, M. | " |
| Matuse, R. | " |
| Evans, J. | " |
| Rogers, E. | " |
| Steele, A. | " |
| Atkinson, R. | " |
| McLeod, E. | " |
| Caudill, S. | " |
| Dennis, E. | " |
| Bailey, J. | " |
| Thigpen, W. | " |
| Seagroves, F. | " |
| Gainey, C. | " |
| Ard, L. | " |
| Thompson, L. | " |
| Welch, T. | " |
| Smith, L. J. | " |
| Andrews, E. | " |
| Broadway, W. | " |
| Stevens, A. | " |
| Mitchum, B. | " |
| Threehouse, N. | " |
| Pinkham, E. | " |
| Edwards, P. | " |
| Amerson, E. | " |
| Ross, J. | " |
| Trimnal, V. | " |
| Floyd, M. | " |
| Robinson, J. | " |
| Pinkney, M. | " |
| Pope, S. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Tisdale, L. E. | 1.5750 |
| Ross, L. | " |
| Blanding, I. | " |
| Dennis, L. | " |
| Rhodes, G. | " |
| Hart, H. | " |
| Herrington, M. | " |
| Smothers, J. | " |
| Riles, M. | " |
| Brown, V. | " |
| Jake, H. | " |
| Dunham, L. | " |
| Britt, L. M. | " |
| Branson, R. | " |
| McCarthy, C. | " |
| Fant, A. M. | " |
| Barnes, A. | " |
| Holland, M. | " |
| Johnson, F. | " |
| Arrants, G. | " |
| Miles, C. | " |
| Matthes, C. | " |
| Benenhaley, C. | " |
| Rice, J. | " |
| Hall, G. | " |
| Hicks, D. | " |
| Moody, E. | " |
| Johnson, B. | " |
| Johnson, R. | " |
| Holladay, V. | " |
| Ridgeway, P. | " |
| Matthews, C. | " |
| Nichols, T. | " |
| Cox, P. | " |
| Sullivan, S. | " |
| McDuffie, M. | " |
| Benenhaley, K. | " |
| Pearson, B. | " |
| Stalvey, B. | " |
| Wood, B. | " |
| Atkinson, E. | " |
| Lindley, V. | " |
| Knight, R. | " |
| Dubose, R. | " |
| Gibson, J. | " |
| Thomas, D. M. | " |
| Campbell, E. | " |
| Briggs, I. | " |
| Freeman, M. | " |
| Trimnal, P. | " |
| Berry, R. | " |
| Boyce, E. | " |
| Walters, S. | " |
| Lee, E. | " |
| Lloyd, V. | " |
| Cockerill, M. | " |
| Restor, N. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Chandler, M. | 1.5750 |
| Myers, A. | " |
| Floyd, S. | " |
| Williams, G. | " |
| Linton, L. | " |
| Beckwith, M. | " |
| Williams, D. | " |
| Gainey, B. | " |
| Capell, E. | " |
| Brown, W. | " |
| Mixon, L. | " |
| Chazen, L. | " |
| Turner, R. | " |
| Byrd, C. | " |
| Dickson, N. | " |
| Branham, H. | " |
| Clanton, L. | " |
| Welch, L. | " |
| Holliday, D. | " |
| Ardis, J. | " |
| Matlock, G. | " |
| Floyd, J. | " |
| Lynch, I. M. | " |
| Caughman, M. | " |
| Mims, B. | " |
| Branham, J. | " |
| Ellis, A. R. | " |
| Hawkins, S. | " |
| Brown, L. | " |
| Parker, B. | " |
| Lewis, D. | " |
| Johnson, E. | " |
| Herrington, L. | " |
| Short, D. | " |
| Sargent, A. | " |
| Johnson, V. | " |
| Murphree, J. | " |
| Hodge, L. | " |
| Simmons, L. | " |
| Benenhaley, E. | " |
| Smoak, S. | " |
| Kirby, D. | " |
| Davenport, T. | " |
| Kelly, G. | " |
| Dority, E. | " |
| Fuller, C. | " |
| Floyd, S. | " |
| Wilson, E. | " |
| McIntyre, P. | " |
| Reagan, L. | " |
| Geddings, N. | " |
| Romines, M. | " |
| Branham, S. | " |
| Yarborough, B. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Tyner, S. | 1.5750 |
| McLeod, J. | " |
| Forney, N. | " |
| Howle, R. | " |
| Riles, I. | " |
| Ard, J. | " |
| Way, M. | " |
| White, E. | " |
| Wingate, S. | " |
| Lyons, E. | " |
| Andrews, P. | " |
| Brown, V. | " |
| Deas, E. | " |
| Grice, R. | " |
| Outlaw, G. | " |
| Stokes, M. | " |
| McElveen, M. | " |
| Moak, B. | " |
| Mims, A. G. | " |
| Weaver, D. | " |
| Anderson, D. E. | " |
| Rodgers, L. | " |
| Gainey, D. | " |
| Kelley, P. | " |
| Stewart, D. | " |
| Harrell, G. | " |
| McElveen, P. | " |
| Crowley, J. | " |
| Timmons, N. | " |
| Cotton, L. | " |
| Smith, L. | " |
| Beiring, A. | " |
| McLaughlin, J. | " |
| Johnson, A. | " |
| Stone, M. | " |
| Snipes, G. | " |
| McClary, N. | " |
| Turner, N. | " |
| Herrington, S. | " |
| Griffin, C. | " |
| James, S. | " |
| Griffin, L. | " |
| Osborne, J. | " |
| Wilson, B. | " |
| Benehaley, G. | " |
| Walker, B. | " |
| Anderson, L. | " |
| Welch, D. | " |
| Malor, N. J. | " |
| Wolfe, S. | " |
| Houck, R. | " |
| Evans, E. | " |
| Mathis, M. | " |
| McLhinney, S. | " |
| Spell, S. | " |
| Welch, L. | " |
| Fuson, G. | " |
| Rowell, J. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Rape, B. | 1.5750 |
| Pack, J. | " |
| Porter, J. | " |
| Stevens, C. | " |
| Simeox, A. | " |
| Blackmon, B. | " |
| Medlin, H. | " |
| Greer, C. | " |
| Welsh, V. | " |
| Truett, L. | " |
| Ross, L. | " |
| Griffin, B. | " |
| McLeod, M. | " |
| Hodge, J. | " |
| Albertson, E. | " |
| Dubose, D. | " |
| Huckabee, M. | " |
| Gibson, L. M. | " |
| Williams, G. | " |
| Barnes, D. | " |
| Barnes, N. | " |
| Wright, M. | " |
| Henderson, J. | " |
| Jackson, D. | " |
| Davis, E. M. | " |
| Burk, L. | " |
| Amerson, M. | " |
| Gainey, D. | " |
| Yarborough, E. | " |
| Hopson, L. | " |
| Wall, L. | " |
| Taylor, J. H. | " |
| Blair, O. J. | " |
| Riley, E. T. | " |
| Pate, J. | " |
| McKenzie, C. | " |
| Spry, R. | " |
| Anderson, R. L. | " |
| McCants, C. | " |
| McDonald, A. | " |
| James, C. | " |
| McCleary, V. | " |
| Hood, M. | " |
| King, I. R. | " |
| Hill, D. | " |
| Crim, A. | " |
| Holland, D. | " |
| Byerly, G. | " |
| Nunnery, C. | " |
| Jacobs, E. | " |
| Buckner, B. | " |
| Fischer, L. | " |
| Alongi, E. | " |
| Dozier, E. | " |
| McGee, D. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Vaughn, E. M. | 1.5750 |
| Anderson, B. | " |
| Stalvey, F. | " |
| Conley, M. | " |
| McCormick, C. | " |
| Williams, H. M. | " |
| Stokes, C. L. | " |
| Clea, M. | " |
| Cook, G. | " |
| Floyd, R. | " |
| Mathis, C. | " |
| Barwick, N. | 1,6550 |
| Davis, I. | " |
| Brown, G. | " |
| Grooms, P. J. | " |
| Miles, M. G. | " |
| Morris, E. P. | " |
| Lowrey, M. M. | " |
| Lynch, M. J. | " |
| Casselman, L. A. | " |
| Gainey, L. | " |
| Freeman, J. E. | " |
| Cox, R. B. | " |
| Pritchard, R. L. | " |
| Rodgers, L. F. | " |
| Stancil, D. H. | " |
| Smith, E. L. | " |
| Ard, M. L. | " |
| Butler, S. L. | " |
| Pierson, V. M. | " |
| Conner, B. | " |
| Buckner, C. C. | " |
| Anderson, B. | " |
| Evans, K. B. | " |
| Nichols, S. J. | " |
| Rogers, J. L. | " |
| Adams, P. J. | " |
| McDaniel, M. B. | " |
| Evans, E. | " |
| Turner, I. | " |
| Bailey, M. K. | " |
| Smith, A. | " |
| Byrd, L. A. | " |
| Clasey, A. N. | " |
| Gainey, F. | " |
| Benedict, G. | " |
| Holladay, O. B. | " |
| Geddings, C. L. | " |
| Hardin, B. J. | " |
| Geddings, J. | " |
| Holden, M. | " |
| Boone, A. M. | " |
| Hyde, T. | " |
| Tidwell, M. L. | " |
| Outlaw, I. M. | " |
| Branson, L. | " |
| Hodge, R. | " |
| Martin, B. | " |
| Privette, B. | " |
| Allen, H. A. | " |
| Lynch, S. J. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Whittington, S. | 1.6550 |
| Rogers, W. | " |
| Copeland, L. F. | " |
| Wilkes, B. L. | " |
| Williams, J. C. | " |
| Croft, B. A. | " |
| Ray, S. | " |
| Bryant, R. M. | " |
| Scott, E. | " |
| Green, M. | " |
| Parker, C. | " |
| Campbell, L. | " |
| Owens, P. | " |
| Welch, E. | " |
| Blackwell, F. | " |
| Brown, D. J. | " |
| Tyler, M. | " |
| McElveen, P. H. | " |
| Smith, M. | " |
| Weaver, S. M. | " |
| Richburg, D. | " |
| Moore, B. | " |
| Benenhaley, H. | " |
| Bentley, J. | " |
| Crocker, T. | " |
| Benenhaley, M. L. | " |
| Poole, B. | " |
| Benehaley, J. | " |
| Scurry, A. | " |
| Lyles, S. | " |
| Bradford, L. | " |
| McHone, V. | " |
| Jordan, M. | " |
| Richardson, L. | " |
| Blackmon, S. | " |
| Peeples, O. | " |
| Beasley, F. | " |
| Noland, P. | " |
| Odom, N. | " |
| Hutton, J. | " |
| Anderson, K. | " |
| Moss, M. | " |
| Lee, D. | " |
| Lewis, M. | " |
| McLeod, P. | " |
| Tervilliger, E. | " |
| Welch, R. L. | " |
| Nesbitt, J. R. | " |
| Freeman, P. | " |
| Conyers, E. | " |
| Gainey, M. | " |
| Gainey, B. | " |
| Bass, C. | " |
| McCoy, H. | " |
| McCluney, A. | " |
| Vincent, S. | " |
| Hughes, M. | " |
| Evans, B. M. | " |
| Washington, E. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Mooneyhan, D. | 1.6550 |
| Blanding, E. | " |
| Lee, E. | " |
| Feiock, L. | " |
| Boyd, L. | " |
| Isaac, M. | " |
| Yates, C. | " |
| Chatmon, A. | " |
| Welch, B. | " |
| Jeror, R. | " |
| Jones, R. | " |
| Wilson, D. | " |
| Feliciano, J. | " |
| Hudson, G. | " |
| Robinson, A. | " |
| Linton, T. | " |
| Benenhaley, T. | " |
| McGee, R. L. | " |
| Geddings, L. V. | " |
| Hayes, J. E. | " |
| Green, D. | " |
| Hyde, N. | " |
| Shuler, J. L. | " |
| Richardson, W. | " |
| Adams, C. | " |
| Poston, J. | " |
| McKinnon, A. | " |
| Ray, A. C. | " |
| Davis, H. A. | " |
| Benenhaley, C. | " |
| Grabeel, F. | " |
| Svetlik, M. | " |
| Luton, K. | " |
| Huggins, J. | " |
| Pearson, B. | " |
| Callen, F. | " |
| Haley, R. | " |
| Amerson, S. | " |
| Frye, J. | " |
| Bochette, J. | " |
| Geddings, R. | " |
| Guinyard, M. | " |
| Montalbano, J. | " |
| Tidwell, T. | " |
| Morrow, J. | " |
| Thrower, J. L. | " |
| Englehaupt, G. | " |
| Coulson, J. | " |
| Allen, C. | " |
| Paranto, D. | " |
| Welch, W. | " |
| Morgan, E. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Figgeroa, E. | 1.6550 |
| Welch, G. | " |
| High, E. | " |
| Myers, C. | " |
| Finch, C. | " |
| Deas, G. | " |
| Conyers, L. | " |
| Benenhaley, P. | " |
| Danner, C. | " |
| Webster, S. | " |
| Stewart, T. | " |
| Hall, J. | " |
| Klawinski, M. | " |
| Stoudenmire, C. | " |
| Atkinson, H. | " |
| Staton, D. | " |
| Gardner, G. L. | " |
| Branham, J. | " |
| Farmer, E. | " |
| Osteen, R. | " |
| Coker, H. | " |
| Bauknight, D. | " |
| David, H. | " |
| Singleton, T. | " |
| Dennis, E. | " |
| Buckner, R. | " |
| Hickson, R. | " |
| Brock, J. | " |
| Shadoan, J. | " |
| Warren, M. | " |
| Kjer, M. | " |
| Leach, A. | " |
| Dorothy, L. | " |
| McLhinney, D. | " |
| Christmas, B. | " |
| Lee, J. | " |
| Branch, J. | " |
| Bauknight, J. | 1.6750 |
| Callen, E. J. | 1.7400 |
| Stewart, B. | " |
| Adams, M. | " |
| Deviney, B. | " |
| Gardner, J. | " |
| Riddle, R. | " |
| Griffin, D. P. | " |
| Smith, R. L. | " |
| Brownlee, J. O. | " |
| Rabon, B. A. | " |
| Huggins, A. L. | " |
| Ward, L. A. | " |
| Payne, N. J. | " |
| Williamson, B. E. | " |
| Ward, O. L. | " |
| Geddings, N. | " |
| Beard, E. G. | " |
| Blackmon, L. | " |
| May, M. H. | " |
| Parker, J. M. | " |
| Martin, M. M. | " |
| McPhail, B. | " |
| Lee, L. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Ryles, L. | 1.7400 |
| Bonds, E. | " |
| Turner, A. L. | " |
| Ray, B. | " |
| Wallace, J. | " |
| Bryant, S. A. | " |
| Turner, V. | " |
| Horton, L. | " |
| Geddings, M. | " |
| Atkinson, B. | " |
| Steele, E. | " |
| Ridgeway, M. | " |
| Haddock, M. | " |
| Benenhaley, I. | " |
| Stokes, S. B. | " |
| Trent, J. | " |
| Doxey, S. | " |
| Maybee, A. | " |
| Dollard, S. | " |
| Crobett, S. | " |
| Wagers, W. | " |
| Compton, C. | " |
| Goldman, V. | " |
| Nunnery, C. E. | " |
| Sanders, J. | " |
| Bailey, D. C. | " |
| Winkles, Jr., E. | " |
| Johnson, A. W. | " |
| Baker, D. | " |
| Evans, M. | " |
| Morris, H. T. | " |
| Jones, M. E. | " |
| Knotts, L. | " |
| Brunson, G. | " |
| Mozingo, R. | " |
| Wilson, H. | " |
| Geddings, J. | " |
| Woodrow, R. | " |
| Smith, W. | " |
| Bryant, L. | " |
| Hopkins, T. | " |
| Gaymon, L. | " |
| Haley, R. | " |
| Lee, B. | " |
| Atkinson, T. | " |
| Harrington, J. | " |
| Adams, L. | " |
| Brownlee, C. | " |
| Pait, D. | " |
| Brewer, T. | " |
| Ward, H. | " |
| Connor, G. | " |
| Sims, J. | " |
| Baker, E. L. | " |
| Stokes, R. J. | " |
| Burr, R. | " |
| Bramlett, R. | " |
| Tidwell, T. | " |
| Atkinson, L. | " |
| Boykin, B. | " |
| Purvis, F. | " |
| Russell, R. | " |
| Stalvey, C. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Farmer, J. | 1.7400 |
| Barnes, W. | " |
| Mooneyham, M. | " |
| Tidwell, L. | " |
| McCall, L. | " |
| Ray, D. | " |
| Coleman, C. | " |
| Atkinson, L. | " |
| Cassidy, C. | " |
| Conyers, C. | " |
| Rogers, H. | " |
| Stalvey, C. | " |
| Barkley, H. | " |
| Bigelow, J. | " |
| Boykin, B. | " |
| Solari, D. | " |
| Rembert, J. | " |
| Hodge, B. | " |
| Tidwell, R. | " |
| Springs, A. | " |
| Brewer, W. | " |
| Abrams, L. D. | " |
| Willis, S. | " |
| Boykin, C. | " |
| Robison, S. | " |
| Rogers, A. | " |
| Galloway, W. | " |
| Ard, J. | " |
| Sanders, C. | " |
| Patterson, L. | " |
| Ivey, R. | " |
| Matlock, V. | " |
| Alexander, K. | " |
| Hood, L. | " |
| Holladay, H. | " |
| Hardin, J. | " |
| Stokes, R. | " |
| Davis, C. F. | " |
| Harmon, S. | " |
| Holladay, C. | " |
| Mack, C. | " |
| McClary, M. | " |
| Jeror, F. | " |
| McKoy, G. | " |
| Beard, A. | " |
| Parker, E. | " |
| Collins, P. | " |
| Beal, J. | " |
| Meeks, D. | " |
| Underdue, C. | " |
| Beltran, R. | " |
| Holloway, D. | " |
| Stiemert, N. | " |
| Doucet, A. | " |
| Dantzler, F. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Welch, A. | 1.7400 |
| Walker, J. | " |
| Cook, C. | " |
| Rogers, G. | " |
| Stephen, O. | " |
| Lopez, R. | " |
| Rowell, W. | " |
| Chambers, H. H. | " |
| Miles, W. | " |
| Squires, F. | " |
| Rimar, M. | " |
| Ray, M. | " |
| Porter, L. | " |
| Price, J. | " |
| Mincey, W. | " |
| Hancock, J. C. | " |
| McIntyre, R. | " |
| Britt, J. | " |
| Cutter, J. | " |
| Morris, H. | " |
| Holmes, T. | " |
| Stalvey, I. | " |
| Markey, L. | " |
| Simplicio, L. | " |
| Hopson, D. | " |
| Gainey, R. | " |
| Keeys, W. | " |
| Williamson, W. | " |
| Johnson, H. | " |
| Vaughn, W. | " |
| Osekoski, H. E. | 1.8250 |
| Coleman, F. L. | " |
| Taylor, D. J. | " |
| Frady, M. W. | " |
| Carpenter, H. | " |
| Atkinson, H. | " |
| Taylor, H. E. | " |
| Skinner, G. B. | " |
| Parker, C. | " |
| Anderson, W. | " |
| Anderson, R. E. | " |
| Watford, R. | " |
| Shirley, L. | " |
| Barkley, R. | " |
| Watford, R. | " |
| Pope, E. | " |
| Matthews, B. | " |
| Walker, A. | " |
| White, C. | " |
| McLeod, R. | " |
| Ray, C. | " |
| Ardis, J. | " |
| Donaldson, E. J. | " |
| Beard, J. | " |
| Garris, M. | " |
| Dollard, T. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| McCathern, B. B. | 1.9150 |
| Pennell, G. | " |
| Timmons, E. E. | " |
| Cockrum, N. | " |
| Martin, B. | " |
| Bryant, J. | " |
| Shorter, J. | " |
| Ramsey, J. | " |
| Ridgeway, W. H. | " |
| Stokes, J. C. | " |
| Hudson, F. E. | " |
| Mathis, L. H. | " |
| Nesbitt, J. A. | " |
| Rogers, E. E. | " |
| Skinner, S. | " |
| Hawthorne, W. | " |
| Thames, W. | " |
| Mims, E. | " |
| Hall, D. C. | " |
| Waynick, J. | " |
| Holladay, C. | " |
| Johnson, B. | " |
| Austin, J. | " |
| Frierson, S. | " |
| Mims, J. W. | " |
| McCoy, J. | " |
| Poplin, W. | " |
| Smith, J. E. | 1.9450 |
| Johnson, J. | " |
| Bolden, D. B. | 2.0150 |
| Nichols, R. C. | " |
| Frank, M. | " |
| Dennis, I. N. | " |
| Anderson, C. V. | " |
| Jones, W. | " |
| Beard, C. | " |
| Huntley, J. | " |
| Hopkins, R. | " |
| Frederick, R. D. | " |
| Robinson, K. E. | " |
| McCormic, J. L. | " |
| Nesbitt, M. | " |
| Stone, R. | " |
| Lindsey, E. | " |
| Grant, J. | " |
| Towery, J. P. | " |
| Berry, H. | " |
| Batten, L. | " |
| Hutson, H. | " |
| Taylor, W. | " |
| Meadows, F. | 2.1200 |
| Finley, F. | " |
| Stone, A. L. | " |
| Wetherby, B. | " |
| Bryant, C. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Milam, I. H. | 2.2050 |
| Driggers, W. A. | " |
| Brown, S. A. | " |
| Geddings, P. | " |
| Weatherly, H. O. | " |
| Hardin, R. L. | " |
| Canty, S. | " |
| Page, T. | 2.2250 |
| Coleman, M., Jr. | " |
| Hancock, H. | " |
| Robertson, W. | " |
| McElveen, J. W. | " |
| Lotwis, W. | " |
| Matthews, R. | 2.4700 |
| Guinther, R. | " |
| Jackson, H. | " |
| Beneski, T. J. | " |
| Jackson, L., Jr. | " |
| Wilson, D. D. | " |
| Davis, H. L. | " |
| Geddings, F. | " |
| Baird, R. E. | " |
| Norris, T. | " |
| Grantham, G. F. | " |
| Hodge, H. | " |
| Walton, E. | " |
| Wilson, B. G. | " |
| Russell, B. J. | " |
| Eanes, R. | " |
| Barkley, R. | " |
| Riddle, L. | " |
| Clardy, W. | " |
| Dill, C. E. | " |
| Croft, M. | 2.7300 |
| Goff, W. | " |
| Suggs, E. L. | " |
| Wicker, E. | " |
| Gibbons, R. | " |
| Coleman, J. | " |
| Dixon, C. K. | " |
| Copeland, J. | " |
| Dunlap, P. J. | " |
| Ridley, J. | " |
| Allen, A. | " |
| Parnell, J. J. | 3.0000 |
| Svetlik, A. | " |
| Davis, J. | " |
| Cuttino, H. W. | " |
| Ard, J. L. | " |
| McIntosh, H. L. | " |
| Frierson, W. | " |
| Foster, B. | " |
| Johnston, R. M. | 3.4000 |
| Weathersbee, H. A. | " |
| Collier, H. | " |

As of July 30, 1967, the following Whites were employed at the following starting hourly wage rates:

| Name | Starting Hourly Wage Rate |
|---|---|
| Cook, B. | 1.5750 |
| Bridgeman, C. | " |
| Timmons, D. | " |
| Brown, L. | " |
| Britt, L. | " |
| Carnes, B. | " |
| Huggins, O. D. | " |
| Hearrell, M. M. | " |
| Callahan, D. L. | " |
| Dew, P. | " |
| Atkinson, J. B. | " |
| Mixon, D. C. | " |
| Boykin, A. | " |
| Milam, E. L. | " |
| Mooneyhan, E. L. | " |
| Moore, P. N. | " |
| Deas, L. B. | " |
| Miles, R. H. | " |
| Hudson, V. | " |
| Oxendine, D. M. | " |
| Hickson, M. C. | " |
| Hornsby, R. K. | " |
| Timmons, M. | " |
| Taylor, J. H. | " |
| Richardson, L. | " |
| Geddings, H. | " |
| Floyd, D. | " |
| Taylor, B. | " |
| Boykin, F. B. | " |
| McIlvain, J. | " |
| Medlin, N. A. | " |
| Benenhaley, N. | " |
| Carter, M. A. | " |
| Geddings, H. | " |
| Jeffords, R. L. | " |
| Melton, M. | " |
| Jones, W. M. | " |
| Loghing, A. E. | " |
| Norris, L. L. | " |
| Teague, H. | " |
| Neal, G. C. | " |
| Peavy, M. J. | " |
| Reaves, P. E. | " |
| Ward, L. | " |
| Tolbert, A. L. | " |
| Hodges, E. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Blair, O. J. | 1.5750 |
| Tuten, S. B. | " |
| McDearmon, M. M. | " |
| Avins, D. M. | " |
| Avins, L. | " |
| Ard, M. L. | " |
| Avins, M. | " |
| Arrants, B. A. | " |
| Atkinson, M. L. | " |
| Barnett, J. R. | " |
| Cribb, I. M. | " |
| Driggers, M. E. | " |
| Oxendine, L. | " |
| McGee, B. A. | " |
| Green, M. A. | " |
| Hodge, J. | " |
| Boyce, J. | " |
| Turner, S. | " |
| Thigpen, D. | " |
| Willard, T. | " |
| Taylor, B. L. | " |
| Pate, J. | " |
| Baker, C. | " |
| Weatherly, V. L. | " |
| Riley, E. T. | " |
| White, J. | " |
| Welch, L. M. | " |
| Anderson, R. L. | " |
| Geddings, R. | " |
| Geddings, B. | " |
| Saxon, M. | " |
| Snow, L. A. | " |
| Gainey, D. I. | " |
| Atkinson, L. H. | " |
| Hudson, P. | " |
| Hostetler, H. | " |
| Buckner, J. | " |
| Barton, S. V. | " |
| Thames, R. | " |
| Holloman, V. D. | " |
| Blankenship, A. | " |
| Tyler, K. | " |
| Hopkins, C. L. | " |
| Hodge, J. | " |
| Fann, L. | " |
| Coker, L. M. | " |
| McKenzie, C. | " |
| Ardis, P. | " |
| Holloman, M. | " |
| Coker, J. | " |
| Jackson, M. E. | " |
| Holcomb, S. R. | " |
| Hancock, J. C. | " |
| Lovelace, F. | " |
| Waynick, T. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| McMickell, M. | 1.5750 |
| Jernigan, Y. | " |
| Driggers, J. H. | " |
| McCleary, V. | " |
| Ward, G. | " |
| Gainey, B. | " |
| Medlin, R. | " |
| Geddings, L. | " |
| Hodge, F. | " |
| Hardee, M. J. | " |
| Holladay, A. B. | " |
| Kelley, G. D. | " |
| Gowdy, D. H. | " |
| Purvis, J. | " |
| Brettelle, G. | " |
| Godwin, D. | " |
| Way, L. | " |
| Spry, R. | " |
| Christmas, G. | " |
| Carraway, B. K. | " |
| Brown, F. D. | " |
| McElveen, T. | " |
| Atkinson, L. | " |
| Dunn, M. | " |
| McLeod, J. C. | " |
| Cranford, R. | " |
| Russell, R. L. | " |
| Morris, J. | " |
| Jeffords, M. D. | " |
| James, G. | " |
| Rodgers, F. | " |
| Ray, E. | " |
| McDonald, A. | " |
| Frierson, D. | " |
| McCants, C. | " |
| DuBose, N. | " |
| Shoemake, A. | " |
| Porter, M. | " |
| Parker, G. | " |
| Richardson, W. | " |
| Grumble, R. | " |
| Timmons, I. M. | " |
| Smith, M. | " |
| Davis, P. S. | " |
| Hodge, M. E. | " |
| Baker, B. D. | " |
| Coffey, P. A. | " |
| Hood, M. | " |
| Galloway, E. | " |
| Browder, S. | " |
| Weatherford, P. | " |
| Huntley, M. | " |
| James, C. | " |
| Geddings, T. | " |
| Frederick, M. | " |
| Poole, M. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Radcliff, A. | 1.5750 |
| Fowler, S. | " |
| Raines, S. | " |
| Gonzales, R. | " |
| Culick, N. | " |
| Gardner, M. | " |
| McLeod, D. | " |
| Amerson, A. | " |
| Long, T. | " |
| Stephens, M. | " |
| Weathersby, E. | " |
| Currie, D. A. | " |
| Smith, M. R. | " |
| McIntosh, M. | " |
| Turner, L. | " |
| Bryant, D. | " |
| Blackwell, A. | " |
| Page, G. | " |
| Jacobs, E. | " |
| Holland, D. | " |
| Bryant, L. | " |
| Coulter, R. | " |
| Turner, S. | " |
| Hensley, M. | " |
| Humphries, J. | " |
| Mixon, E. | " |
| Olsen, K. | " |
| Hardin, D. | " |
| Mims, C. | " |
| Mims, L. B. | " |
| Pack, C. W. | " |
| Windham, G. | " |
| Anderson, J. | " |
| Stokes, B. | " |
| Graham, M. | " |
| Spivey, M. | " |
| Ray, S. | " |
| Hill, D. | " |
| King, I. R. | " |
| Hodge, L. N. | " |
| Hurst, M. | " |
| Holmes, V. | " |
| Harrington, R. | " |
| Hyatt, P. | " |
| Spires, W. | " |
| Ray, V. | " |
| Jones, T. | " |
| Bramlett, V. | " |
| Player, A. M. | " |
| Geddings, A. | " |
| Welch, D. | " |
| Stewart, C. | " |
| Wingo, M. | " |
| Christmas, L. | " |
| Galloway, M. R. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Crosby, P. | 1.5750 |
| Coker, T. | " |
| Hodge, R. | " |
| Windham, L. | " |
| McClam, L. | " |
| Ray, R. | " |
| Jackson, E. | " |
| Carrington, S. | " |
| Cribb, L. | " |
| Jackson, F. | " |
| Brown, B. | " |
| Goddard, R. | " |
| Miles, A. | " |
| Allen, M. W. | " |
| Brown, F. | " |
| Broach, J. A. | " |
| Byerly, G. | " |
| Nunnery, A. | " |
| Pittman, L. | " |
| Cain, M. | " |
| Farr, V. | " |
| Donaldson, M. | " |
| Turner, L. | " |
| Morton, P. | " |
| Williamson, V. M. | " |
| Morris, P. | " |
| Welch, F. | " |
| Green, J. | " |
| Webster, L. | " |
| Lair, J. | " |
| Dozier, E. | " |
| Varn, C. | " |
| Phillips, M. R. | " |
| Hudson, D. | " |
| Samford, G. | " |
| Carter, M. G. | " |
| Adams, C. | " |
| Davis, F. | " |
| Friel, L. | " |
| Himes, M. | " |
| Bartlette, C. | " |
| Floyd, F. | " |
| Rodgers, W. | " |
| Oxendine, B. | " |
| Welch, E. L. | " |
| Brewer, B. | " |
| Baker, J. | " |
| Wilson, D. | " |
| Frazier, N. | " |
| Buchanan, E. | " |
| Brewer, F. | " |
| Chambers, E. | " |
| Smith, J. | " |
| Carter, E. | " |
| Norris, G. | " |
| Garcia, I. B. | " |
| Lloyd, P. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Benehaley, E. | 1.5750 |
| Bass, C. | " |
| Buckner, B. | " |
| Tobias, A. | " |
| Payne, E. | " |
| Baker, R. | " |
| Penley, C. | " |
| Briggs, M. | " |
| Ross, W. | " |
| Harper, J. | " |
| Hardee, G. | " |
| Gowdy, N. | " |
| Oxendine, B. | " |
| Brown, M. | " |
| Branham, E. | " |
| Baughn, B. | " |
| James, H. | " |
| Ballard, E. | " |
| Beard, A. | " |
| Fischer, L. | " |
| Huggins, B. | " |
| Helsel, M. | " |
| Kivett, B. | " |
| Lambert, O. | " |
| McAllister, A. | " |
| Layton, D. | " |
| Coleman, B. | " |
| Ardis, B. | " |
| Frye, E. | " |
| Matthews, I. | " |
| Frye, R. | " |
| Doss, M. | " |
| Quattlebaum, B. | " |
| Tester, S. | " |
| Dollard, J. | " |
| Ross, J. | " |
| Hill, S. | " |
| Hutson, M. | " |
| Baxter, P. | " |
| Amerson, L. | " |
| White, J. | " |
| Oxendine, A. M. | " |
| Beard, W. R. | " |
| Kegley, S. | " |
| Burnett, M. | " |
| Galloway, J. | " |
| Lee, B. | " |
| Bramlette, H. | " |
| McGee, D. | " |
| Vaughn, E. M. | " |
| Anderson, B. | " |
| Boling, W. | " |
| Tidwell, D. | " |
| Alongi, E. | " |
| Prine, E. | " |
| Lewis, C. | " |
| Smith, T. | " |
| Walling, M. | " |
| Christmas, M. | " |
| Scarborough, D. | " |
| Anderson, B. | " |
| Bruce, A. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Price, I. N. | 1.5750 |
| Moorer, A. | " |
| Branham, M. A. | " |
| Tomlinson, J. | " |
| Roberts, G. | " |
| McLeod, I. | " |
| Bradley, H. | " |
| Richburg, L. | " |
| Floyd, N. | " |
| Amerson, S. | " |
| Sargent, M. | " |
| Stalvey, F. | " |
| Griffin, N. | " |
| Marshall, F. | " |
| Osborne, P. | " |
| Mathis, P. | " |
| Piver, F. | " |
| Lee, C. | |
| Purvis, S. | " |
| Jaones, A. | " |
| Robinson, J. | " |
| Amerson, E. | " |
| Threehouse, N. | " |
| Ross, J. | " |
| Floyd, M. | " |
| Reynolds, S. | " |
| Wright, R. | " |
| Broadway, W. | " |
| Smith, L. J. | " |
| Thompson, L. | " |
| Loftis, T. | " |
| Widener, J. | " |
| Bell, O. | " |
| Brown, E. L. | " |
| Wall, S. | " |
| Welch, P. | " |
| Dunham, L. | " |
| Branson, R. | " |
| Riles, M. | " |
| Jakes, H. | " |
| Pinkney, M. | " |
| Pope, S. | " |
| Britt, L. M. | " |
| Johnson, M. | " |
| Driggers, B. | " |
| Snipes, L. | " |
| Dennis, L. | " |
| Stevens, A. | " |
| Baker, F. | " |
| McCoy, S. | " |
| Browder, R. | " |
| Hall, H. | " |
| Brewer, V. | " |
| Philemon, R. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Blackmon, B. | 1.5750 |
| Hart, H. | " |
| Barnes, A. | " |
| Holland, M. | " |
| Matthews, L. | " |
| Kruger, L. | " |
| Cockerill, M. | " |
| Lee, E. | " |
| Freeman, M. | " |
| Berry, R. | " |
| Floyd, S. | " |
| Chandler, M. | " |
| Walters, S. | " |
| Lloyd, V. | " |
| Brown, W. | " |
| Mixon, L. | " |
| Beckwith, M. | " |
| Linton, L. | " |
| Lighthill, C. | " |
| Dickson, N. | " |
| Turner, R. | " |
| Gainey, B. | " |
| Branham, H. | " |
| Welch, L. | " |
| Clanton, L. | " |
| Chazen, L. | " |
| Ardis, J. | " |
| Matlock, G. | " |
| Floyd, J. | " |
| Thigpen, W. | " |
| Seagroves, F. | " |
| Gainey, C. | " |
| Nichols, T. | " |
| Ridgeway, P. | " |
| McDuffie, M. | " |
| Pearson, B. | " |
| Benenhaley, K. | " |
| Sullivan, S. | " |
| Stalvey, B. | " |
| Atkinson, E. | " |
| Benenhaley, C. | " |
| Arrants, G. | " |
| Geddings, C. J. | " |
| Bland, M. | " |
| Garner, A. | " |
| Parker, N. M. | " |
| Jackson, M. | " |
| Johnson, L. | " |
| Dunlap, N. | " |
| Outlaw, D. | " |
| Easterling, P. | " |
| Stidd, C. | " |
| Wallace, D. | " |
| Howle, R. | " |
| McLeod, J. | " |
| Caughman, M. | " |
| Welch, T. | " |
| Ard, L. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Hawkins, S. | 1.5750 |
| Short, D. | " |
| Herrington, L. | " |
| Johnson, E. | " |
| Murphree, J. | " |
| Hodge, L. | " |
| Johnson, V. | " |
| Sargent, A. | " |
| Smoak, S. | " |
| Kirby, D. | " |
| Benenhaley, E. | " |
| Simmons, L. | " |
| Wilson, E. | " |
| Reagan, L. | " |
| Romines, M. | " |
| Poole, M. | " |
| Alexander, C. | " |
| Andrews, E. | " |
| Belcher, A. | " |
| Turner, G. | " |
| Budeen, J. | " |
| Campbell, V. | " |
| Lloyd, V. | " |
| Banks, S. | " |
| Ardis, E. | " |
| King, V. | " |
| Langensiepen, E. | " |
| Howard, E. | " |
| Collins, B. | " |
| Ayers, V. | " |
| Charles, L. | " |
| Ridgeway, J. | " |
| Sanders, M. | " |
| Brown, J. | " |
| Tisdale, R. | " |
| Lowry, M. | " |
| Evans, J. | " |
| Hutson, P. | " |
| Porter, V. | " |
| Atkinson, R. | " |
| Rogers, E. | " |
| Melton, M. | " |
| McLeod, E. | " |
| Smothers, J. | " |
| Brown, V. H. | " |
| Dennis, E. | " |
| Anderson, D. E. | " |
| Rodgers, L. | " |
| Weaver, D. | " |
| Gainey, D. | " |
| Stewart, D. | " |
| Kelley, P. | " |
| McElveen, P. | " |
| Cotton, L. | " |
| Crowley, J. | " |
| Smith, L. | " |
| Johnson, A. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Snipes, G. | 1.5750 |
| James, S. | " |
| Osborne, J. | " |
| Benehaley, G. | " |
| Anderson, L. | " |
| Malor, N. J. | " |
| Riles, I. | " |
| Tisdale, L. E. | " |
| Welch, L. | " |
| Rape, B. | " |
| Pack, J. | " |
| Rowell, J. | " |
| Stevens, C. | " |
| Blackmon, B. | " |
| Greer, C. | " |
| Medlin, H. | " |
| Welsh, V. | " |
| Truett, L. | " |
| Griffin, B. | " |
| Ross, L. | " |
| Albertson, E. | " |
| Dubose, D. | " |
| Huckabee, M. | " |
| Hodge, J. | " |
| Williams, G. | " |
| Barnes, D. | " |
| Barnes, N. | " |
| Gibson, L. M. | " |
| Henderson, J. | " |
| Davis, E. M. | " |
| Amerson, M. | " |
| Jackson, D. | " |
| Gainey, D. | " |
| Whicker, H. | " |
| Yarborough, E. | " |
| Conley, M. | " |
| Moody, E. | " |
| Johnson, B. | " |
| McCormick, C. | " |
| McCarthy, C. | " |
| Fant, A. M. | " |
| Shirah, P. | " |
| Tennant, G. | " |
| Wallace, B. | " |
| Turner, J. | " |
| Mills, M. | " |
| Maslanko, R. | " |
| Steen, M. | " |
| Brown, E. M. | " |
| Burnett, D. | " |
| Crosby, M. | " |
| Gainey, B . | " |
| Griswold, B. | " |
| Brown, L. | " |
| Lewis, F. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Didonato, S. | 1.5750 |
| Trimnal, P. | " |
| Rhodes, G. | " |
| Herrington, M. | " |
| Griggs, L. | " |
| Haney, M. | " |
| Coates, L. | " |
| Neese, E. | " |
| Sanders, M. | " |
| Floyd, M. L. | " |
| McLhinney, B. | " |
| Humble, G. | " |
| Melton, P. | " |
| Cox, P. | " |
| Geddings, S. | " |
| Johnson, R. | " |
| Holladay, V. | " |
| Cox, P. | " |
| McLhinney, S. | " |
| Rice, J. | " |
| Hall, G. | " |
| Miles, C. | " |
| Lynch, I. M. | " |
| Brown, L. | " |
| Mims, B. | " |
| Geddings, N. | " |
| Lindley, V. | " |
| Dubose, R. | " |
| Gibson, J. | " |
| Knight, R. | " |
| Thomas, D. M. | " |
| Briggs, I. | " |
| Ard, J. | " |
| White, E. | " |
| Way, M. | " |
| Andrews, P. | " |
| Wingate, S. | " |
| Brown, V. | " |
| Lyons, E. | " |
| Outlaw, G. | " |
| Deas, M. E. | " |
| McElveen, M. | " |
| Stokes, M. | " |
| Tyner, S. | " |
| Yarborough, B. | " |
| Spell, S. | " |
| Fuson, G. | " |
| Harrington, L. | " |
| Collins, B. | " |
| Glisson, L. A. | " |
| Glisson, M. A. | " |
| Nichols, P. | " |
| Gainey, S. | " |
| Sarpolus, E. | " |
| Freeman, S. | " |
| McLeod, P. | " |
| Winburn, P. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Welch, B. | 1.5750 |
| Winburn, F. | " |
| Poston, P. | " |
| Tisdale, W. | " |
| Atkinson, V. | " |
| Webb, L. | " |
| Thames, P. | " |
| Hinson, G. | " |
| Lynch, M. F. | " |
| Sipes, N. | " |
| Floyd, M. | " |
| Barkley, D. | " |
| Foecking, E. | " |
| McFaddin, H. | " |
| Niklas, J. | " |
| Roland, H. | " |
| Davis, C. | " |
| Wall, L. | " |
| Cribb, J. | " |
| Ortiz, F. | " |
| Mathis, M. | " |
| Evans, E. | " |
| Wolfe, S. | " |
| Houck, R. | " |
| Clea, M. | " |
| Floyd, R. | " |
| Cook, G. | " |
| Grice, S. | " |
| Mathis, C. | " |
| Davis, I. | 1.6550 |
| Lynch, M. J. | " |
| Morris, E. P. | " |
| Miles, M. G. | " |
| Casselman, L. A. | " |
| Cox, R. B. | " |
| Barfield, I. | " |
| Brown, G. | " |
| Barwick, N. | " |
| Smith, E. L. | " |
| Pierson, V. M. | " |
| Lowrey, M. M. | " |
| Grooms, P. J. | " |
| Gainey, L. | " |
| Butler, S. L. | " |
| Conner, B. | " |
| Evans, K. B. | " |
| Pritchard, R. L. | " |
| Stancil, D. H. | " |
| Adams, P. J. | " |
| Rogers, J. L. | " |
| Buckner, C. C. | " |
| Anderson, B. | " |
| Bailey, M. K. | " |
| Byrd, L. A. | " |
| Geddings, J. | " |
| Benedict, G. | " |
| Evans, E. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Geddings, C. L. | 1.6550 |
| Smith, A. | " |
| Nichols, S. J. | " |
| McDaniel, M. B. | " |
| Turner, I. | " |
| Clasey, A. N. | " |
| Holladay, O. B. | " |
| Boone, A. M. | " |
| Hyde, T. | " |
| Hodge, R. | " |
| Martin, B. | " |
| Outlaw, I. M. | " |
| Garrison, J. | " |
| Tidwell, M. L. | " |
| Wilson, D. | " |
| Holden, M. | " |
| Copeland, L. F. | " |
| Croft, B. A. | " |
| Williams, J. C. | " |
| Lynch, S. J. | " |
| Privette, B. | " |
| Wilkes, B. L. | " |
| Bryant, R. M. | " |
| Parker, C. | " |
| Owens, P. | " |
| Scott, E. | " |
| Welch, E. | " |
| Green, M. | " |
| Crim, A. | " |
| Campbell, L. | " |
| Weaver, S. M. | " |
| McElveen, P. H. | " |
| Brown, D. J. | " |
| Moore, B. | " |
| Hudson, G. | " |
| Crocker, T. | " |
| Smith, M. | " |
| Bentley, J. | " |
| Richburg, D. | " |
| Johnson, J. | " |
| Benenhaley, M. L. | " |
| Benenhaley, H. | " |
| Scurry, A. | " |
| Richardson, L. | " |
| Poole, B. | " |
| Beasley, F. | " |
| Hall, E. | " |
| Hutton, J. | " |
| McHone, V. | " |
| Lyles, S. | " |
| Peeples, O. | " |
| Conyers, E. | " |
| Tervilliger, E. | " |
| Blackmon, S. | " |
| Linton, T. | " |
| McLeod, P. | " |
| Robinson, A. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Gainey, M. | 1.6550 |
| Freeman, P. | " |
| Nesbitt, J. R. | " |
| Vann, S. | " |
| Beattie, A. | " |
| Vincent, S. | " |
| McCoy, H. | " |
| Hughes, M. | " |
| Johnson, A. | " |
| Mooneyhan, D. | " |
| McDowell, E. | " |
| Moore, M. | " |
| Washington, E. | " |
| Evans, B. M. | " |
| Bryant, V. | " |
| Welch, B. | " |
| Yates, C. | " |
| Wood, B. | " |
| Jeror, R. | " |
| Boyd, L. | " |
| Blanding, I. | " |
| Isaac, M. | " |
| Lee, E. | " |
| Feiock, L. | " |
| Chatmon, A. | " |
| Sanders, J. | " |
| Geddings, L. V. | " |
| Green, D. | " |
| Stokes, C. L. | " |
| McGee, R. L. | " |
| Shuler, J. L. | " |
| Williams, H. M. | " |
| Hyde, N. | " |
| Grabeel, F. | " |
| Poston, J. | " |
| Bramlett, R. | " |
| Svetlik, M. | " |
| Pearson, B. | " |
| Benenhaley, C. | " |
| Donaldson, E. J. | " |
| Haley, R. | " |
| Bochette, J. | " |
| Abrams, L. D. | " |
| Amerson, S. | " |
| Frye, J. | " |
| Englehaupt, G. | " |
| Morrow, J. | " |
| Allen, C. | " |
| Geddings, R. | " |
| Coulson, J. | " |
| Tidwell, T. | " |
| Paranto, D. | " |
| Figgeroa, E. | " |
| Meeks, D. | " |
| Guinyard, M. | " |
| Finch, C. | " |
| Myers, C. | " |
| Thrower, J. L. | " |
| Blanding, E. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Deas, George | 1.6550 |
| Klawinski, M. | " |
| Benenhaley, P. | " |
| Morgan, E. | " |
| High, E. | " |
| Atkinson, H. | " |
| Stoudenmire, C. | " |
| Webster, S. | " |
| Danner, C. | " |
| Warren, M. | " |
| Christmas, B. | " |
| Mincey, W. | " |
| Stewart, T. | " |
| Hall, J. | " |
| McAllister, B. | " |
| Baker, L. | " |
| Bramlett, R. | " |
| Turner, E. | " |
| Britton, E. | " |
| White, P. | " |
| Trimnal, J. | " |
| Farmer, E. | " |
| Branham, J. | " |
| Staton, D. | " |
| Coker, H. | " |
| Bauknight, D. | " |
| Hickson, R. | " |
| Kjer, M. | " |
| Shadoan, J. | " |
| Buckner, R. | " |
| Bryant, D. | " |
| Morris, W. | " |
| Branch, J. | " |
| Howell, D. | " |
| Ray, D. | " |
| Cook, T. H. | " |
| McLhinney, D. | " |
| Wilson, O. V. | 1.7400 |
| Deviney, B. | " |
| Gardner, J. | " |
| Griffin, D. P. | " |
| Adams, M. | " |
| Riddle, R. | " |
| Callen, E. J. | " |
| Geddings, M. S. | " |
| Huggins, A. L. | " |
| Smith, R. L. | " |
| Brownlee, J. O. | " |
| Ward, O. L. | " |
| Williamson, B. E. | " |
| Rabon, B. A. | " |
| Geddings, N. | " |
| McPhail, B. | " |
| May, M. H. | " |
| Welch, J. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Parker, J. M. | 1.7400 |
| Blackmon, L. | " |
| Bonds, E. | " |
| Lee, L. | " |
| Horton, L. | " |
| Wallace, J. | " |
| Ryles, L. | " |
| Turner, A. L. | " |
| Martin, M. M. | " |
| Atkinson, B. | " |
| Ray, B. | " |
| Steele, E. | " |
| Ridgeway, M. | " |
| Ray, S. | " |
| Bryant, S. A. | " |
| Turner, V. | " |
| Stokes, S. B. | " |
| Benenhaley, I. | " |
| Trent, J. | " |
| Doxey, S. | " |
| Maybee, A. | " |
| Dollard, S. | " |
| Wagers, W. | " |
| Compton, C. | " |
| Goldman, V. | " |
| Nunnery, C. E. | " |
| Johnson, A. W. | " |
| Winkles, E., Jr. | " |
| Baker, D. | " |
| Evans, M. | " |
| Brunson, G. | " |
| Morris, H. T. | " |
| Jones, M. E. | " |
| Mozingo, R. | " |
| Wilson, H. | " |
| Bryant, L. | " |
| Woodrow, R. | " |
| Smith, W. | " |
| Gaymon, L. | " |
| Hopkins, T. | " |
| Atkinson, T. | " |
| Richardson, W. | " |
| Haley, R. | " |
| Brewer, T. | " |
| Adams, L. | " |
| Harrington, J. | " |
| Connor, G. | " |
| Ward, H. | " |
| Sims, J. | " |
| Tidwell, T. | " |
| Vaughn, W. | " |
| Atkinson, L. | " |
| Boykin, B. | " |
| Baker, E. L. | " |
| Stalvey, C. | " |
| Cassidy, C. | " |
| Tidwell, L. | " |
| Mooneyham, M. | " |
| McCall, L. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Ray, D. | 1.7400 |
| Coleman, C. | " |
| Atkinson, L. | " |
| Barkley, H. | " |
| Stalvey, C. | " |
| Conyers, C. | " |
| Hodge, B. | " |
| Solari, D. | " |
| Springs, A. | " |
| Rembert, J. | " |
| Robison, S. | " |
| Willis, S. | " |
| Galloway, W. | " |
| Boykin, C. | " |
| Alexander, K. | " |
| Matlock, V. | " |
| Brewer, W. | " |
| Stokes, R. | " |
| Mack, C. | " |
| Davis, C. F. | " |
| Sanders, C. | " |
| Ard, J. | " |
| Collins, P. | " |
| Hardin, J. | " |
| Holladay, H. | " |
| Holloway, D. | " |
| Beal, J. | " |
| Stiemert, N. | " |
| Ray, L. | " |
| McClary, M. | " |
| Beard, A. | " |
| Rogers, G. | " |
| Lopez, R. | " |
| Underdue, C. | " |
| Beltran, R. | " |
| Squires, F. | " |
| Rimar, M. | " |
| Welch, A. | " |
| Stephen, O. | " |
| Cook, C. | " |
| Hancock, J. C. | " |
| Chambers, H. H. | " |
| Miles, W. | " |
| Stalvey, I. | " |
| Conyers, L. | " |
| Ray, M. | " |
| Porter, L. | " |
| Burroughs, J. | " |
| Hampton, D. L. | " |
| Franklin, D. | " |
| Pritchard, J. | " |
| Davis, W. | " |
| Britt, J. | " |
| McIntyre, R. | " |
| Holmes, T. | " |
| Simplicio, L. | " |
| McLeod, E. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Williamson, W. | 1.7400 |
| Englehart, R. | " |
| Addy, B. | " |
| Holladay, T. | " |
| Shirah, T. | " |
| Crim, M. | " |
| Osekoski, H. E. | 1.8250 |
| Frady, M.W. | " |
| Gainey, F. | " |
| Coleman, F. L. | " |
| Taylor, D. J. | " |
| Moore, P. | " |
| Atkinson, H. | " |
| Taylor, H. E. | " |
| Parker, C. | " |
| Skinner, G. B. | " |
| Anderson, W. | " |
| Anderson, R. E. | " |
| Shirley, L. | " |
| Barkley, R. | " |
| Watford, R. | " |
| Matthews, B. | " |
| Walker, A. | " |
| Pope, E. | " |
| White, C. | " |
| Ray, C. | " |
| Ardis, J. | " |
| McLeod, R. | " |
| Beard, J. | " |
| Dollard, T. | " |
| Pennell, G. | 1.9150 |
| McCathern, B. B. | " |
| Timmons, E. E. | " |
| Carpenter, H. | " |
| Cockrum, N. | " |
| Bryant, J. | " |
| Martin, B. | " |
| Ramsey, J. | " |
| Stokes, J. C. | " |
| Ridgeway, W. H. | " |
| Hudson, F. E. | " |
| Bailey, D. C. | " |
| Mathis, L. H. | " |
| Skinner, S. | " |
| Nesbitt, J. A. | " |
| Hawthorne, W. | " |
| Thames, W. | " |
| Mims, E. | " |
| Hall, D. C. | " |
| Benbow, A. | " |
| Austin, J. | " |
| Holladay, C. | " |
| Purvis, F. | " |
| Frierson, S. | " |
| McCoy, J. | " |
| Boykin, B. | " |
| Mims, J. W. | " |
| Poplin, W. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Johnson, J. | 1.9450 |
| Smith, J. E. | " |
| Dennis, I. N. | 2.0150 |
| Bolden, D. B. | " |
| Nichols, R. C. | " |
| Frank, M. | " |
| Anderson, C. V. | " |
| Corbett, S. | " |
| Beard, C. | " |
| Jones, W. | " |
| Huntley, J. | " |
| Hopkins, R. | " |
| Robinson, K. E. | " |
| McCormic, J. L. | " |
| Frederick, R. D. | " |
| Nesbitt, M. | " |
| Lindsey, E. | " |
| Grant, J. | " |
| Stone, R. | " |
| Berry, H. | " |
| Taylor, W. | " |
| Batten, L. | " |
| Towery, J. P. | " |
| Hutson, H. | " |
| Finley, F. | 2.1200 |
| Stone, A. L. | " |
| Wetherby, B. | " |
| Bryant, C. | " |
| Milam, I. H. | 2.2050 |
| Geddings, P. | " |
| Brown, S. A. | " |
| Page, T. | 2.2250 |
| Coleman, M., Jr. | " |
| Robertson, W. | " |
| Hancock, H. | " |
| McElveen, J. W. | " |
| Lotwis, W. | " |
| Guinther, R. | 2.4700 |
| Davis, H. L. | " |
| Geddings, F. | " |
| Wilson, D. D. | " |
| Hodge, H. | " |
| Geddings, R. | " |
| Walton, E. | " |
| Norris, T. | " |
| Baird, R.E. | " |
| Driggers, W. A. | " |
| Eanes, R. | " |
| Dill, C. E. | " |
| Hardin, R. L. | " |
| Barkley, R. | " |
| Riddle, L. | " |
| Wilson, B. G. | " |
| Clardy, W. | " |
| Weatherly, H. O. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Matthews, R. | 2.4700 |
| Beneski, T. J. | " |
| Jackson, L., Jr. | " |
| Russell, B. J. | " |
| Jackson, H. | 2.7300 |
| Wicker, E. | " |
| Suggs, E. L. | " |
| Goff, W. | " |
| Dixon, C. K. | " |
| Ridley, J. | " |
| Copeland, J. | " |
| Croft, M. | " |
| Coleman, J. | " |
| Grantham, G. F. | " |
| Gibbons, R. | " |
| Allen, A. | " |
| Dunlap, P. J. | " |
| Svetlik, A. | 3.0000 |
| Cuttino, H. W. | " |
| Davis, J. | " |
| Parnell, J. J. | " |
| Madray, T. W. | " |
| McIntosh, H. L. | " |
| Ard, J. L. | " |
| Frierson, W. | " |
| Foster, B. | " |
| Johnston, R. M. | 3.4000 |
| Weathersbee, H. A. | " |
| Collier, H. | " |

As of August 27, 1967, the following Whites were employed at the following starting hourly wage rates:

| Name | Starting Hourly Wage Rate |
|---|---|
| Cook, B. | 1.5750 |
| Bridgeman, C. | " |
| Timmons, D. | " |
| Dew, P. | " |
| Atkinson, J. B. | " |
| Brown, L. | " |
| Boykin, A. | " |
| Britt, L. | " |
| Carnes, B. | " |
| Huggins, O. D. | " |
| Hearrell, M. M. | " |
| Hudson, V. | " |
| Callahan, D. L. | " |
| Floyd, D. | " |
| Hornsby, R. K. | " |
| Hickson, M. C. | " |
| Mooneyhan, E. L. | " |
| Milam, E. L. | " |
| Moore, P. N. | " |
| Medlin, N. A. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| McIlvain, J. | 1.5750 |
| Deas, L. B. | " |
| Miles, R. H. | " |
| Geddings, H. | " |
| Jeffords, R. L. | " |
| Melton, M. | " |
| Oxendine, D. M. | " |
| Norris, L. L. | " |
| Richardson, L. | " |
| Reaves, P. E. | " |
| Timmons, M. | " |
| Peavy, M. J. | " |
| Taylor, B. | " |
| Tolbert, A. L. | " |
| Boykin, F. B. | " |
| Blair, O. J. | " |
| Taylor, J. H. | " |
| Tuten, S. B. | " |
| Arrants, B. A. | " |
| Atkinson, M. L. | " |
| Ard, M. L. | " |
| Avins, D. | " |
| Avins, L. | " |
| Avins, M. | " |
| Cribb, I. M. | " |
| Driggers, M. E. | " |
| Benenhaley, N. | " |
| Carter, M. A. | " |
| Oxendine, L. | " |
| McGee, B. A. | " |
| Loghing, A. E. | " |
| Jones, W. M. | " |
| Neal, G. C. | " |
| Riley, E. T. | " |
| Teague, H. | " |
| Ward, L. | " |
| Anderson, R. L. | " |
| Weatherly, V. L. | " |
| McDearmon, M. M. | " |
| Brownlee, J. O. | " |
| Barnett, J. R. | " |
| Bailey, M. K. | " |
| Corbett, B. | " |
| Nichols, S. J. | " |
| Barton, S. V. | " |
| Thames, R. | " |
| Green, M. A. | " |
| Atkinson, L. H. | " |
| Holloman, V. D. | " |
| Baker, C. | " |
| Coker, L. M. | " |
| Thigpen, D. | " |
| Hodge, J. | " |
| Boyce, J. | " |
| Turner, S. | " |
| Willard, T. | " |
| Taylor, B. L. | " |
| Pate, J. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Welch, L. M. | 1.5750 |
| White, J. | " |
| McKenzie, C. | " |
| Geddings, R. | " |
| Geddings, B. | " |
| Jackson, M. E. | " |
| Holcomb, S. R. | " |
| Saxon, M. | " |
| Snow, L. A. | " |
| Gainey, D. I. | " |
| Waynick, T. | " |
| Godwin, D. | " |
| Hostetler, H. | " |
| Hudson, P. | " |
| Buckner, J. | " |
| Christmas, G. | " |
| Spry, R. | " |
| Hodge, J. | " |
| Fann, L. | " |
| Atkinson, L. | " |
| Brettelle, G. | " |
| Purvis, J. | " |
| Jeffords, M. D. | " |
| Coker, J. | " |
| Holloman, M. | " |
| Rodgers, F. | " |
| James, G. | " |
| Outlaw, I. M. | " |
| Ardis, P. | " |
| McLeod, J. C. | " |
| Dunn, M. | " |
| McMickell, M. | " |
| Driggers, J. H. | " |
| Lovelace, F. | " |
| Parker, G. | " |
| Timmons, I. M. | " |
| Gowdy, D. H. | " |
| Ward, G. | " |
| Gainey, B. | " |
| Medlin, R. | " |
| Jernigan, Y. | " |
| Hardee, M. J. | " |
| Browder, S. | " |
| McElveen, T. | " |
| Huntley, M. | " |
| Kelley, G. | " |
| Hodge, M. E. | " |
| Coffey, P. | " |
| Baker, B. D. | " |
| Carraway, B. | " |
| Brown, F. D. | " |
| Bryant, S. A. | " |
| Fowler, S. | " |
| Russell, R. L. | " |
| Weatherford, P. | " |
| Cranford, R. | " |
| Richardson, W. | " |
| Grumble, R. | " |
| McCants, C. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Ray, E. | 1.5750 |
| McDonald, A. | " |
| Frierson, D. | " |
| Porter, M. | " |
| DuBose, N. | " |
| Shoemake, A. | " |
| Davis, P. S. | " |
| Smith, M. | " |
| Long, T. | " |
| Weathersby, E. | " |
| Hood, M. | " |
| Galloway, E. | " |
| Turner, L. | " |
| James, C. | " |
| Geddings, T. | " |
| Poole, M. | " |
| Blackwell, A. | " |
| Page, G. | " |
| Bryant, L. | " |
| Coulter, R. | " |
| Turner, S. | " |
| Radclif, A. | " |
| Olsen, K. | " |
| McClan, E. M. | " |
| McLeod, D. | " |
| Raines, S. | " |
| Gonzales, R. | " |
| Culick, N. | " |
| Mims, L. B. | " |
| Currie, D. A. | " |
| Pack, C. W. | " |
| Amerson, A. | " |
| Mims, C. | " |
| Anderson, J. G. | " |
| Stokes, B. | " |
| Smith, M. R. | " |
| Bryant, D. | " |
| Jacobs, E. | " |
| Holland, D. | " |
| Hill, D. | " |
| King, I. R. | " |
| Hodge, L. N. | " |
| Hyatt, P. | " |
| Homes, V. | " |
| Harrington, R. | " |
| Jones, T. | " |
| Ray, V. | " |
| Windham, G. | " |
| Geddings, A. | " |
| Graham, M. | " |
| Christmas, L. | " |
| Ray, S. | " |
| Carrington, S. | " |
| Jackson, E. | " |
| Cribb, L. | " |
| Hurst, M. | " |
| Goddard, R. | " |
| Miles, A. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Spires, W. | 1.5750 |
| Pittman, L. | " |
| Byerly, G. | " |
| Nunnery, A. | " |
| Bramlett, V. | " |
| Donaldson, M. | " |
| Player, A. M. | " |
| Farr, V. | " |
| Stewart, C. | " |
| Welch, D. | " |
| Williamson, V. M. | " |
| Wingo, M. | " |
| Morton, P. | " |
| Crosby, P. | " |
| Morris, P. | " |
| Galloway, M. R. | " |
| Coker, T. | " |
| Hodge, R. | " |
| Windham, L. | " |
| McClam, L. | " |
| Ray, R. | " |
| Webster, L. | " |
| Brown, B. | " |
| Jackson, F. | " |
| Broach, J. A. | " |
| Davis, F. | " |
| Friel, L. | " |
| Allen, M. W. | " |
| Rodgers, W. | " |
| Cain, M. | " |
| Brewer, B. | " |
| Baker, J. | " |
| Wilson, D. | " |
| Turner, L. | " |
| Brewer, F. | " |
| Chambers, E. | " |
| Smith, J. | " |
| Carter, E. | " |
| Welch, F. | " |
| Green, J. | " |
| Norris, G. | " |
| Garcia, I. B. | " |
| Lloyd, P. | " |
| Dozier, E. | " |
| Varn, C. | " |
| Phillips, M. R. | " |
| Hudson, D. | " |
| Samford, G. | " |
| Carter, M. G. | " |
| Adams, C. | " |
| Tobias, A. | " |
| Baker, R. | " |
| Bartlette, C. | " |
| Floyd, F. | " |
| Hardee, G. | " |
| Briggs, M. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Ross, W. | 1.5750 |
| Harper, J. | " |
| Gowdy, N. | " |
| Oxendine, B. | " |
| Brown, M. | " |
| Welch, E. L. | " |
| Oxendine, B. | " |
| Baughn, B. | " |
| Buchanan, E. | " |
| Frazier, N. | " |
| Ballard, E. | " |
| Benehaley, E. | " |
| Bass, C. | " |
| Buckner, B. | " |
| Lambert, O. | " |
| Layton, D. | " |
| Coleman, B. | " |
| Frye, R. | " |
| Branham, E. | " |
| Matthews, I. | " |
| James, H. | " |
| Tester, S. | " |
| Dollard, J. | " |
| Beard, A. | " |
| Fischer, L. | " |
| Bramlette, H. | " |
| Huggins, B. | " |
| Helsel, M. | " |
| Lee, B. | " |
| Kivett, B. | " |
| Boling, W. | " |
| Tidwell, D. | " |
| Prine, E. | " |
| Lewis, C. | " |
| Smith, T. | " |
| Alongi, E. | " |
| Roberts, G. | " |
| Tomlinson, J. | " |
| McLeod, I. | " |
| Branham, M. A. | " |
| Floyd, N. | " |
| Richburg, L. | " |
| Bradley, H. | " |
| McAllister, A. | " |
| Griffin, N. | " |
| Stalvey, F. | " |
| Ardis, B. | " |
| Frye, E. | " |
| Gudson, C. | " |
| Jones, A. | " |
| Purvis, S. | " |
| Reynolds, T. C. | " |
| Doss, M. | " |
| Reynolds, S. | " |
| Quattlebaum, B. | " |
| Wright, R. | " |
| Loftis, T. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Bell, O. | 1.5750 |
| Brown, E. L. | " |
| Welch, P. | " |
| Widener, J. | " |
| Amerson, L. | " |
| Hutson, M. | " |
| Baxter, P. | " |
| Hill, S. | " |
| Kegley, S. | " |
| Oxendine, A. M. | " |
| Beard, W. R. | " |
| White, J. | " |
| Galloway, J. | " |
| Burnett, M. | " |
| Driggers, B. | " |
| Johnson, M. | " |
| Snipes, L. | " |
| Vaughn, E. M. | " |
| McGee, D. | " |
| Anderson, B. | " |
| McCoy, S. | " |
| Baker, F. | " |
| Browder, R. | " |
| Hall, H. | " |
| Philemon, R. | " |
| Brewer, V. | " |
| Blackmon, B. | " |
| Walling, M. | " |
| Christmas, M. | " |
| Scarborough, D. | " |
| Price, I. N. | " |
| Moorer, A. | " |
| Matthews, L. | " |
| Kruger, L. | " |
| Baker, M. | " |
| Amerson, S. | " |
| Sargent, M. | " |
| Thigpen, W. | " |
| Seagroves, F. | " |
| Gainey, C. | " |
| Marshall, F. | " |
| Osborne, P. | " |
| Mathis, P. | " |
| Piver, F. | " |
| Lee, C. | " |
| Geddings, C. J. | " |
| Bland, M. | " |
| Garner, A. | " |
| Parker, N. M. | " |
| Wallace, D. | " |
| Outlaw, D. | " |
| Johnson, L. | " |
| Jackson, M. | " |
| Amerson, E. | " |
| Stidd, C. | " |
| Easterling, P. | " |
| Ross, J. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Floyd, M. | 1.5750 |
| Robinson, J. | " |
| Ard, L. | " |
| Thompson, L. L. | " |
| Welch, T. | " |
| Smith, L. J. | " |
| Belcher, A. | " |
| Andrews , E. | " |
| Alexander, C. | " |
| Poole, M. | " |
| Lloyd, V. | " |
| Campbell, V. | " |
| Budeen, J. | " |
| Turner, G. | " |
| Ardis, E. | " |
| King, V. | " |
| Banks, S. | " |
| Ayers, V. | " |
| Howard, E. | " |
| Charles, L. | " |
| Brown, J. | " |
| Tisdale, R. | " |
| Ridgeway, J. | " |
| Sanders, M. | " |
| Hutson, P. | " |
| Lowry, M. | " |
| Evans, J. | " |
| Melton, M. | " |
| Atkinson, R. | " |
| Rogers, E. | " |
| McLeod, E. | " |
| Jake, H. | " |
| Smothers, J. | " |
| Brown, V. H. | " |
| Riles, M. | " |
| Pope, S. | " |
| Dunham, L. | " |
| Pinkney, M. | " |
| Ross, L. | " |
| Dennis, L. | " |
| Mitchum, B. | " |
| Stevens, A. | " |
| Johnson, B. | " |
| McCormick, C. | " |
| Conley, M. | " |
| Moody, E. | " |
| Fant, A. M. | " |
| Holland, M. | " |
| Hart, H. | " |
| Barnes, A. | " |
| Trimnal, P. | " |
| Rhodes, G. | " |
| Herrington, M. | " |
| Cockerill, M. | " |
| Lee, E. | " |
| Freeman, M. | " |
| Berry, R. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Floyd, S. | 1.5750 |
| Chandler, M. | " |
| Walters, S. | " |
| Lloyd, V. | " |
| Brown, W. | " |
| Mixon, L. | " |
| Beckwith, M. | " |
| Linton, L. | " |
| Lighthill, C. | " |
| Dickson, N. | " |
| Turner, R. | " |
| Gainey, B. | " |
| Branham, H. | " |
| Welch, L. | " |
| Clanton, L. | " |
| Chazen, L. | " |
| Ardis, J. | " |
| Matlock, G. | " |
| Floyd, J. | " |
| Johnson, R. | " |
| Holladay, V. | " |
| Ridgeway, P. | " |
| McDuffie, M. | " |
| Nichols, T. | " |
| Benenhaley, K. | " |
| Sullivan, S. | " |
| Stalvey, B. | " |
| Atkinson, E. | " |
| Benehaley, C. | " |
| Arrants, G. | " |
| Hall, G. | " |
| Miles, C. | " |
| McLeod, J. | " |
| Caughman, M. | " |
| Mims, B. | " |
| Brown, L. | " |
| Lynch, I. M. | " |
| Herrington, L. | " |
| Short, D. | " |
| Hawkins, S. | " |
| Johnson, E. | " |
| Johnson, V. | " |
| Hodge, L. | " |
| Murphree, J. | " |
| Sargent, A. | " |
| Wilson, E. | " |
| Romines, M. | " |
| Kirby, D. | " |
| Reagen, L. | " |
| Geddings, N. | " |
| Dubose, R. | " |
| Lindley, V. | " |
| Thomas, D. M. | " |
| Anderson, D. E. | " |
| Gibson, J. | " |
| Weaver, D. | " |
| Crowley, J. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Rodgers, L. | 1.5750 |
| Gainey, D. | " |
| Johnson, A. | " |
| James, S. | " |
| Smith, L. | " |
| Snipes, G. | " |
| Anderson, L. | " |
| Osborne, J. | " |
| Malor, N. J. | " |
| Riles, I. | " |
| Ard, J. | " |
| White, E. | " |
| Andrews, P. | " |
| Lyons, E. | " |
| Brown, V. | " |
| Wingate, S. | " |
| Outlaw, G. | " |
| Stokes, M. | " |
| McElveen, M. | " |
| Deas, M. E. | " |
| Tyner, S. | " |
| Fuson, G. | " |
| Yarborough, B. | " |
| Rowell, J. | " |
| Medlin, H. | " |
| Rape, B. | " |
| Pack, J. | " |
| Blackmon, B. | " |
| Griffin, B. | " |
| Greer, C. | " |
| Welsh, V. | " |
| Hodge, J. | " |
| Williams, G. | " |
| DuBose, D. | " |
| Huckabee, M. | " |
| Gibson, L. M. | " |
| Henderson, J. | " |
| Barnes, D. | " |
| Barnes, N. | " |
| Jackson, D. | " |
| Gainey, D. | " |
| Davis, E. M. | " |
| Amerson, M. | " |
| Yarborough, E. | " |
| Glisson, M. A. | " |
| Sarpolus, E. | " |
| Nichols, P. | " |
| Collins, B. | " |
| Freeman, S. | " |
| Welch, B. | " |
| McLeod, P. | " |
| Gainey, S. | " |
| Winburn, F. | " |
| Atkinson, V. | " |
| Poston, P. | " |
| Shirah, P. | " |
| Mills, M. | " |
| Turner, J. | " |
| Tennant, G. | " |
| Brown, E. M. | " |
| Glisson, L. A. | " |
| Harrington, L. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Griswold, B. | 1.5750 |
| Steen, M. | " |
| Maslanko, R. | " |
| Gainey, B. | " |
| Lewis, F. | " |
| Crosby, M. | " |
| Brown, L. | " |
| Webb, L. | " |
| Thames, P. | " |
| Griggs, L. | " |
| Haney, M. | " |
| Hinson, G. | " |
| Neese, E. | " |
| McLhinney, B. | " |
| Sanders, M. | " |
| Coates, L. | " |
| Floyd, M. L. | " |
| Barkley, D. | " |
| Lynch, M. F. | " |
| Floyd, M. | " |
| McFaddin, H. | " |
| Roland, H. | " |
| Niklas, J. | " |
| Sipes, N. | " |
| Wolfe, S. | " |
| Wall, L. | " |
| Ortiz, F. | " |
| Cribb, J. | " |
| McLhinney, S. | " |
| Evans, E. | " |
| Houck, R. | " |
| Mathis, M. | " |
| Frick, C. | " |
| Hodges, E. | " |
| Clea, M. | " |
| Floyd, R. | " |
| Cook, G. | " |
| Mathis, C. | " |
| Davis, I. | 1.6550 |
| Barfield, I. | " |
| Brown, G. | " |
| Barwick, N. | " |
| Gainey, L. | " |
| Morris, E. P. | " |
| Miles, M. G. | " |
| Lowrey, M. M. | " |
| Casselman, L. A. | " |
| Cox, R. B. | " |
| Smith, E. L. | " |
| Pierson, V. M. | " |
| Pritchard, R. | " |
| Stancil, D. | " |
| Smith, R. L. | " |
| Rogers, R. | " |
| Butler, S. | " |
| Anderson, B. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Conner, B. | 1.6550 |
| Evans, K. B. | " |
| Evans, E. | " |
| Adams, P. J. | " |
| Rogers, J. L. | " |
| Smith, A. | " |
| McDaniel, M. B. | " |
| Nichols, S. J. | " |
| Buckner, C. C. | " |
| Byrd, L. A. | " |
| Turner, I. | " |
| Hopkins, C. L. | " |
| Clasey, A. N. | " |
| Holladay, O. B. | " |
| Geddings, J. | " |
| Geddings, C. L. | " |
| Hancock, J. C. | " |
| Tidwell, M. L. | " |
| Way, L. | " |
| Wilson, D. | " |
| Hyde, T. | " |
| Boone, A. M. | " |
| Martin, B. | " |
| Hodge, R. | " |
| McCleary, V. | " |
| Garrison, J. | " |
| Privette, B. | " |
| Wilkes, B. L. | " |
| Copeland, L. F. | " |
| Croft, B. A. | " |
| Williams, J. C. | " |
| Scott, E. | " |
| Gardner, M. | " |
| Stephens, M. | " |
| McIntosh, M. | " |
| Green, M. | " |
| Crim, A. | " |
| Bryant, R. M. | " |
| Parker, C. | " |
| Owens, P. | " |
| Hensley, M. | " |
| Humphries, J. | " |
| Hardin, D. | " |
| Weaver, S. M. | " |
| Richburg, D. | " |
| McElveen, P. H. | " |
| Moore, B. | " |
| Hudson, G. | " |
| Crocker, T. | " |
| Smith, M. | " |
| Bentley, J. | " |
| Scurry, A. | " |
| Johnson, J. R. | " |
| Poole, B. | " |
| Lair, J. | " |
| Benenhaley, M. L. | " |
| Benenhaley, H. | " |
| McHone, V. | " |
| Peeples, O. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Richardson, L. | 1.6550 |
| Blackmon, S. | " |
| Beasley, F. | " |
| Hutton, J. | " |
| Hall, E. | " |
| Linton, T. | " |
| McLeod, P. | " |
| Conyers, E. | " |
| Tervilliger, E. | " |
| Freeman, P. | " |
| Vann, S. | " |
| Robinson, A. | " |
| Gainey, M. | " |
| McCoy, H. | " |
| Johnson, A. | " |
| McDowell, E. | " |
| Moore, M. | " |
| Beattie, A. | " |
| Anderson, B. J. | " |
| Bruce, A. | " |
| Hughes, M. | " |
| Mooneyhan, D. | " |
| Porter, V. | " |
| Blanding, E. | " |
| Boyd, L. | " |
| Blanding, I. | " |
| Washington, E. | " |
| Evans, B. M. | " |
| Lee, E. | " |
| Isaac, M. | " |
| Welch, B. | " |
| Feiock, L. | " |
| Yates, C. | " |
| Chatmon, A. | " |
| Wood, B. | " |
| Jeror, R. | " |
| Geddings, L. V. | " |
| Sanders, J. | " |
| Green, D. | " |
| Stokes, C. L. | " |
| Shuler, J. L. | " |
| Hyde, N. | " |
| Williams, H. M. | " |
| Poston, J. | " |
| Grabeel, F. | " |
| Donaldson, E. J. | " |
| Svetlik, M. | " |
| Pearson, B. | " |
| Benenhaley, C. | " |
| Haley, R. | " |
| Bochette, J. | " |
| Amerson, S. | " |
| Frye, J. | " |
| Englehaupt, G. | " |
| Guinyard, M. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Allen, C. | 1.6550 |
| Geddings, R. | " |
| Thrower, J. L. | " |
| Tidwell, T. | " |
| Morrow, J. | " |
| Myers, C. | " |
| Coulson, J. | " |
| Meeks, D. | " |
| Deas, G. | " |
| Klawinski, M. | " |
| Morgan, E. | " |
| Paranto, D. | " |
| High, E. | " |
| Stoudenmire, C. | " |
| Danner, C. | " |
| Warren, M. | " |
| Mincey, W. | " |
| Hall, J. | " |
| Howell, D. | " |
| Branham, J. | " |
| Staton, D. | " |
| Farmer, E. | " |
| Coker, H. | " |
| Brock, J. | " |
| Bauknight, D. | " |
| Singleton, T. | " |
| Hickson, R. | " |
| Shadoan, J. | " |
| Kjer, M. | " |
| Buckner, R. | " |
| Ray, D. | " |
| McAllister, B. | " |
| Turner, E. | " |
| Solomon, T. | " |
| Bramlett, R. | " |
| Britton, E. | " |
| Trimnal, J. | " |
| Morris, W. | " |
| Fortune, I. | " |
| Cook, T. H. | " |
| Deviney, B. | 1.7400 |
| Adams, M. | " |
| Riddle, R. | " |
| Gardner, J. | " |
| Callen, E. J. | " |
| Griffin, D. P. | " |
| Geddings, M. S. | " |
| Huggins, A. L. | " |
| Rabon, B. | " |
| Ward, O. | " |
| Ballentine, G. | " |
| May, M. H. | " |
| Blackmon, L. M. | " |
| Geddings, N. | " |
| Parker, J. M. | " |
| McPhail, B. | " |
| Holladay, A. B. | " |
| Lee, L. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Ryles, L. | 1.7400 |
| Turner, A. L. | " |
| Ray, B. | " |
| Horton, L. | " |
| Wallace, J. | " |
| Atkinson, B. | " |
| Turner, V. | " |
| Steele, E. | " |
| Ridgeway, M. | " |
| Ray, S. | " |
| Frederick, M. | " |
| Stokes, S. B. | " |
| Benenhaley, I. | " |
| Doxey, S. | " |
| Maybee, A. | " |
| Dollard, S. | " |
| Ross, J. | " |
| Rice, J. | " |
| Wagers, W. | " |
| Finley, F. | " |
| Goldman, V. | " |
| Nunnery, C. E. | " |
| Morris, H. | " |
| Jones, M. E. | " |
| Evans, M. | " |
| Winkles, Jr., E. | " |
| Mozingo, R. | " |
| Baker, D. | " |
| Brunson, G. | " |
| McGee, R. | " |
| Wilson, H. | " |
| Gaymon, L. | " |
| Atkinson, T. | " |
| Richardson, W. | " |
| Hopkins, T. | " |
| Brewer, T. | " |
| Adams, L. | " |
| Haley, R. | " |
| Connor, G. | " |
| Baker, E. L. | " |
| Harrington, J. | " |
| Tidwell, T. | " |
| Athinson, Jr., L. A. | " |
| Vaughn, W. | " |
| Boykin, B. | " |
| Stalvey, C. | " |
| Ward, H. H. | " |
| Sims, J. | " |
| Cassidy, C. | " |
| Atkinson, Sr., L. A. | " |
| Tidwell, L. | " |
| Conyers, C. | " |
| Ray, D. | " |
| Mooneyham, M. | " |
| McCall, L. | " |
| Coleman, C. | " |
| Boykin, C. | " |
| Brewer, W. | " |
| Stalvey, C. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Rogers, H. | 1.7400 |
| Alexander, K. | " |
| Matlock, V. | " |
| Hodge, B. | " |
| Springs, A. | " |
| Solari, D. | " |
| Stokes, R. | " |
| Davis, C. F. | " |
| Holladay, C. | " |
| Mack, C. | " |
| Jeror, F. | " |
| Montalbano, J. | " |
| McClary, M. | " |
| Sanders, C. | " |
| Robison, S. | " |
| Underdue, C. | " |
| Hardin, J. | " |
| Holladay, H. | " |
| Cook, C. | " |
| Welch, A. | " |
| Stephen, O. | " |
| Beard, A. | " |
| Collins, P. | " |
| Squires, F. | " |
| Rimar, M. | " |
| Miles, W. | " |
| Beal, J. | " |
| Holloway, D. | " |
| Benenhaley, P. | " |
| Hancock, J. C. | " |
| Rogers, G. | " |
| Stalvey, I. | " |
| Conyers, L. | " |
| Ray, M. | " |
| Porter, L. | " |
| Burroughs, J. | " |
| McIntyre, R. | " |
| Holmes, T. | " |
| Addy, B. | " |
| Pritchard, J. | " |
| Englehart, R. | " |
| Simplicio, L. | " |
| Williamson, W. | " |
| Hampton, D. L. | " |
| Lee, J. | " |
| Franklin, D. | " |
| Holladay, T. | " |
| Baker, L. | " |
| White, P. | " |
| Nathaniel, S. | " |
| McLeod, E. | " |
| Crim, M. | " |
| Hatfield, R. | " |
| Wilson, O. V. | " |
| Welch, J. | " |
| Benenhaley, L. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Osekoski, H. E. | 1.8250 |
| Frady, M. W. | " |
| Coleman, F. L. | " |
| Taylor, D. | " |
| Gainey, F. | " |
| Moore, P. | " |
| Atkinson, H. | " |
| Taylor, H. | " |
| Parker, C. | " |
| Skinner, G. B. | " |
| Anderson, W. | " |
| Anderson, R. E. | " |
| Watford, R. | " |
| Shirley, L. | " |
| Barkley, R. | " |
| Walker, A. | " |
| Matthews, B. | " |
| Ray, C. | " |
| Pope, E. | " |
| McLeod, R. | " |
| Dollard, T. | " |
| Beard, J. | " |
| McCathern, B. B. | 1.9150 |
| Timmons, E. E. | " |
| Williamson, B. E. | " |
| Carpenter, H. | " |
| Cockrum, N. | " |
| Bryant, J. | " |
| Martin, B. | " |
| Ramsey, J. | " |
| Bailey, D. C. | " |
| Hudson, F. E. | " |
| Mathis, L. H. | " |
| Skinner, S. | " |
| Hawthorne, W. | " |
| Mims, E. | " |
| Nesbitt, J. A. | " |
| Woodrow, R. | " |
| Smith, W. | " |
| Thames, W. | " |
| Hall, D. C. | " |
| Austin, J. | " |
| Benbow, A. | " |
| Purvis, F. | " |
| Frierson, S. | " |
| Holladay, C. | " |
| McCoy, J. | " |
| Bramlett, R. | " |
| Boykin, B. | " |
| Mims, J. W. | " |
| Poplin, W. | " |
| McLhinney, D. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Johnson, J. R. | 1.9450 |
| Smith, J. E. | " |
| Bolden, D. B. | 2.0150 |
| Dennis, I. N. | " |
| Nichols, R. C. | " |
| Frank, M. | " |
| Anderson, C. V. | " |
| Corbett, S. | " |
| Beard, C. | " |
| Jones, W. | " |
| Huntley, J. | " |
| Hopkins, R. | " |
| McCormic, J. L. | " |
| Robinson, K. E. | " |
| Frederick, R. D. | " |
| Nesbitt, M. | " |
| Lindsay, E. L. | " |
| Grant, J. | " |
| Stone, R. | " |
| Batten, L. | " |
| Hutson, H. | " |
| Berry, H. | " |
| Taylor, W. | " |
| Towery, J. P. | " |
| Compton, C. | 2.1200 |
| Stone, A. L. | " |
| Wetherby, B. | " |
| Bryant, C. | " |
| Coleman, Jr., M. | 2.2250 |
| Robertson, W. | " |
| Hancock, H. | " |
| McElveen, J. W. | " |
| Lotwis, W. | " |
| Milam, I. H. | 2.4700 |
| Driggers, W. A. | " |
| Matthews, R. | " |
| Guinther, R. | " |
| Geddings, P. | " |
| Weatherly, H. O. | " |
| Davis, H. L. | " |
| Geddings, F. | " |
| Barwick, R. | " |
| Jackson, Jr., L. | " |
| Beneski, T. J. | " |
| Wilson, D. D. | " |
| Brown, S. A. | " |
| Hodge, H. | " |
| Geddings, R. | " |
| Walton, E. | " |
| Norris, T. | " |
| Eanes, R. | " |
| Dill, C. E. | " |
| Hardin, R. L. | " |
| Barkley, R. | " |
| Riddle, L. | " |
| Wilson, B. G. | " |
| Clardy, W. | " |
| Russell, B. J. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Jackson, H. | 2.7300 |
| Wicker, E. | " |
| Croft, M. | " |
| Goff, Jr., W. W. | " |
| Suggs, E. L. | " |
| Coleman, J. | " |
| Dixon, C. K. | " |
| Grantham, G. F. | " |
| Gibbons, R. | " |
| Ridley, J. | " |
| Copeland, J. | " |
| Baird, R. E. | " |
| Allen, A. | " |
| Dunlap, P. J. | " |
| Davis, J. | 3.0000 |
| Madray, T. W. | " |
| Parnell, J. J. | " |
| Svetlik, A. | " |
| Cuttino, H. W. | " |
| McIntosh, H. L. | " |
| Ard, J. L. | " |
| Frierson, W. | " |
| Weathersbee, H. A. | 3.4000 |
| Johnston, R. M. | " |
| Collier, H. | " |
| Foster, B. | " |

As of September 30, 1967, the following Whites were employed at the following starting hourly wage rates:

| Name | Starting Hourly Wage Rate |
|---|---|
| Elmore, S. | 1.5750 |
| Makison, V. | " |
| Timmons, L. | " |
| McCoy, D. | " |
| James, G. | " |
| Outlaw, I. M. | " |
| Driggers, B. | " |
| Johnson, M. | " |
| Lovelace, F. | " |
| Parker, G. | " |
| Coker, L. M. | " |
| McKenzie, C. | " |
| Richburg, L. | " |
| Branham, M. A. | " |
| Floyd, N. | " |
| Tidwell, D. | " |
| Helsel, M. | " |
| Cribb, J. | " |
| Medlin, N. A. | " |
| McIlvain, J. | " |
| Lee, C. | " |
| Bland, M. | " |
| Parker, N. M. | " |
| Geddings, C. J. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Johnson, L. | 1.5750 |
| Outlaw, D. | " |
| Jackson, M. | " |
| Wallace, D. | " |
| Stidd, C. | " |
| Easterling, P. | " |
| Amerson, E. | " |
| Trimnal, V. | " |
| Ross, J. | " |
| Robinson, J. | " |
| Floyd, M. | " |
| Culick, N. | " |
| Raines, S. | " |
| Gonzales, R. | " |
| Bryant, L. | " |
| Olsen, K. | " |
| McClam, E. M. | " |
| Caughman, M. | " |
| Herrington, L. | " |
| Mims, B. | " |
| Amerson, A. | " |
| McLeod, D. | " |
| Jones, W. M. | " |
| McGee, B. A. | " |
| Loghing, A. | " |
| Mooneyhan, E. L. | " |
| Milam, E. L. | " |
| Rodgers, W. | " |
| Jackson, F. | " |
| Friel, L. | " |
| Webster, L. | " |
| Brown, B. | " |
| McLeod, J. | " |
| Hall, G. | " |
| Graham, M. | " |
| Christmas, L. | " |
| Welch, L. M. | " |
| Oxendine, L. | " |
| Buckner, B. | " |
| Ross, L. | " |
| Jacobs, E. | " |
| Welch, B. | " |
| Sarpolus, E. | " |
| Gainey, S. | " |
| Shirah, P. | " |
| Mills, M. | " |
| Tennant, G. | " |
| Brown, E. M. | " |
| Holland, D. | " |
| McDearmon, M. M. | " |
| Peavy, M. J. | " |
| Carter, M. G. | " |
| Beasley, F. | " |
| Samford, G. | " |
| Hudson, D. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Baker, R. | 1.5750 |
| Tobias, A. | " |
| Adams, C. | " |
| Wilson, D. | " |
| Hodge, M. E. | " |
| Coffey, P. A. | " |
| Baker, B. D. | " |
| Mathis, P. | " |
| Piver, F. | " |
| Marshall, F. | " |
| Seagroves, F. | " |
| Osborne, P. | " |
| Carraway, B. | " |
| McElveen, T. | " |
| Buckner, J. | " |
| Hostetler, H. | " |
| Quattlebaum, B. | " |
| Wright, R. | " |
| Doss, M. | " |
| Ardis, B. | " |
| Frye, E. | " |
| Snow, L. A. | " |
| Gainey, D. I. | " |
| Anderson, R. L. | " |
| Branham, E. | " |
| Frye, R. | " |
| Benehaley, E. | " |
| Bass, C. | " |
| Lambert, O. | " |
| Anderson, D. E. | " |
| Weaver, D. | " |
| Rodgers, L. | " |
| Gainey, D. | " |
| Crowley, J. | " |
| Johnson, A. | " |
| Smith, L. | " |
| Snipes, G. | " |
| Anderson, L. | " |
| Ard, J. | " |
| Riles, I. | " |
| Andrews, P. | " |
| Wingate, S. | " |
| Brown, V. | " |
| Lyons, E. | " |
| Outlaw, G. | " |
| Deas, M. E. | " |
| McElveen, M. | " |
| Fuson, G. | " |
| Boykin, A. | " |
| Kegley, S. | " |
| Oxendine, A. M. | " |
| White, J. | " |
| Baxter, P. | " |
| Galloway, J. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Burnett, M. | 1.5750 |
| Beard, W. R. | " |
| Long, T. | " |
| Dennis, L. | " |
| Mitchum, B. | " |
| Smith, M. | " |
| Weathersby, E. | " |
| Oxendine, D. M. | " |
| Brown, L. | " |
| Goddard, R. | " |
| Miles, A. | " |
| Hurst, M. | " |
| Herrington, M. | " |
| Berry, R. | " |
| Trimnal, P. | " |
| Rhodes, G. | " |
| Freeman, M. | " |
| Lloyd, V. | " |
| Lee, E. | " |
| Holmes, V. | " |
| Harrington, R. | " |
| Barkley, D. | " |
| McFaddin, H. | " |
| Sipes, N. | " |
| Niklas, J. | " |
| Hardin, D. | " |
| Jones, T. | " |
| Holloman, V. D. | " |
| Thames, R. | " |
| Corbett, B. | " |
| Avins, D. | " |
| Avins, L. | " |
| Ard, M. L. | " |
| Avins, M. | " |
| Arrants, B. A. | " |
| Benenhaley, N. | " |
| Baughn, B. | " |
| Buchanan, E. | " |
| Bartlette, C. | " |
| Floyd, F. | " |
| Hardee, G. | " |
| Campbell, V. | " |
| Belcher, A. | " |
| Poole, M. | " |
| Alexander, C. | " |
| Ardis, E. | " |
| Budeen, J. | " |
| King, V. | " |
| Turner, G. | " |
| Howard, E. | " |
| Banks, S. | " |
| Charles, L. | " |
| Ayers, V. | " |
| Ridgeway, J. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Brown, J. | 1.5750 |
| Sanders, M. | " |
| Tisdale, R. | " |
| Lowry, M. | " |
| Hutson, P. | " |
| Evans, J. | " |
| McDonald, A. | " |
| Bryant, S. A. | " |
| Fowler, S. | " |
| Ardis, P. | " |
| Dunn, M. | " |
| Coker, J. | " |
| Amerson, L. | " |
| Hutson, M. | " |
| Hill, S. | " |
| Reynolds, S. | " |
| Spry, R. | " |
| Christmas, G. | " |
| Fann, L. | " |
| Hodge, J. | " |
| Atkinson, L. | " |
| Atkinson, L. H. | " |
| Lee, B. | " |
| Kivett, B. | " |
| Bramlette, H. | " |
| James, H. | " |
| Griswold, B. | " |
| Maslanko, R. | " |
| Steen, M. | " |
| Huggins, O. D. | " |
| Price, I. N. | " |
| Kruger, L. | " |
| Matthews, L. | " |
| Blackwell, A. | " |
| Galloway, E. | " |
| Page, G. | " |
| Walters, S. | " |
| Linton, L. | " |
| Chandler, M. | " |
| Floyd, S. | " |
| Beckwith, M. | " |
| Turner, R. | " |
| Mixon, L. | " |
| Brown, W. | " |
| Dickson, N. | " |
| Clanton, L. | " |
| Lighthill, C. | " |
| Chazen, L. | " |
| Welch, L. | " |
| Matlock, G. | " |
| Branham, H. | " |
| Floyd, J. | " |
| Ardis, J. | " |
| Johnson, R. | " |
| Holladay, V. | " |
| James, C. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Geddings, T. | 1.5750 |
| Taylor, B. | " |
| Boykin, F. B. | " |
| Hornsby, R. K. | " |
| Hearrell, M. M. | " |
| Hickson, M. C. | " |
| Welch, D. | " |
| Stewart, C. | " |
| Wingo, M. | " |
| Farr, V. | " |
| Donaldson, M. | " |
| Stevens, A. | " |
| Johnson, B. | " |
| McCormick, C. | " |
| Conley, M. | " |
| Moody, E. | " |
| Fant, A. M. | " |
| Hill, D. | " |
| King, I. R. | " |
| Hodge, L. | " |
| Lewis, F. | " |
| Webb, L. | " |
| Hyatt, P. | " |
| Barnett, J. R. | " |
| Tolbert, A. L. | " |
| Blair, O. J. | " |
| Tuten, S. B. | " |
| Briggs, M. | " |
| Ross, W. | " |
| Harper, J. | " |
| Green, J. | " |
| Garcia, I. B. | " |
| Lloyd, P. | " |
| Norris, G. | " |
| Varn, C. | " |
| Phillips, M. R. | " |
| Dozier, E. | " |
| Weatherford, P. | " |
| Browder, S. | " |
| Huntley, M. | " |
| Welch, T. | " |
| Russell, R. L. | " |
| Cranford, R. | " |
| Purvis, J. | " |
| Brettelle, G. | " |
| Bell, O. | " |
| Brown, E. L. | " |
| Reynolds, T. C. | " |
| Godwin, D. | " |
| Hudson, P. | " |
| Tester, S. | " |
| Robinson, A. | " |
| Layton, D. | " |
| Collins, B. | " |
| Vaughn, E. M. | " |
| McGee, D. | " |
| Snipes, L. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Anderson, B. | 1.5750 |
| Hall, H. | " |
| McCoy, S. | " |
| Baker, F. | " |
| Brewer, V. | " |
| Walling, M. | " |
| Blackmon, B. | " |
| Philemon, R. | " |
| Davis, P. S. | " |
| Holland, M. | " |
| Hart, H. | " |
| Barnes, A. | " |
| Hood, M. | " |
| Taylor, J. H. | " |
| Reaves, P. E. | " |
| Richardson, L. | " |
| Britt, L. | " |
| Hudson, V. | " |
| Player, A. M. | " |
| Bramlett, V. | " |
| Pittman, L. | " |
| Nunnery, A. | " |
| McMickell, M. | " |
| Jernigan, Y. | " |
| Driggers, J. H. | " |
| Scarborough, D. | " |
| Christmas, M. | " |
| Moorer, A. | " |
| Ward, G. | " |
| Medlin, R. | " |
| Geddings, L. | " |
| Jackson, M. E. | " |
| Holcomb, S. R. | " |
| Stalvey, F. | " |
| Griffin, N. | " |
| McLeod, I. | " |
| Tomlinson, J. | " |
| Moore, P. N. | " |
| Andrews, E. | " |
| Thompson, L. L. | " |
| Smith, L. J. | " |
| Mims, L. B. | " |
| Mims, C. | " |
| Pack, C. W. | " |
| DuBose, R. | " |
| Thomas, D. M. | " |
| Gibson, J. | " |
| Smith, M. R. | " |
| Currie, D. A. | " |
| Teague, H. | " |
| Neal, G. C. | " |
| Geddings, H. | " |
| Brewer, B. | " |
| Cain, M. | " |
| Allen, M. W. | " |
| Broach, J. A. | " |
| Davis, F. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Jeffords, M. D. | 1.5750 |
| Holloman, M. | " |
| Rodgers, F. | " |
| Barton, S. V. | " |
| Lewis, C. | " |
| Boling, W. | " |
| Alongi, E. | " |
| Prine, E. | " |
| Smith, T. | " |
| Beard, A. | " |
| Fischer, L. | " |
| Huggins, B. | " |
| Hinson, G. | " |
| Floyd, M. L. | " |
| Griggs, L. | " |
| Haney, M. | " |
| Sanders, M. | " |
| Floyd, M. | " |
| McLhinney, B. | " |
| Callahan, D.L. | " |
| Thigpen, W. | " |
| Sargent, M. | " |
| Poole, M. | " |
| Stalvey, B. | " |
| Atkinson, E. | " |
| Benenhaley, K. | " |
| Sullivan, S. | " |
| Miles, C. | " |
| Benenhaley, C. | " |
| Arrants, G. | " |
| Coulter, R. | " |
| Turner, S. | " |
| Radcliff, A. | " |
| Carter, M. A. | " |
| Floyd, D. | " |
| Ray, R. | " |
| Hodge, R. | " |
| Galloway, M. R. | " |
| Coker, T. | " |
| McClam, L. | " |
| Windham, L. | " |
| Morton, P. | " |
| Williamson, V. M. | " |
| Morris, P. | " |
| McDuffie, M. | " |
| Nichols, T. | " |
| Ridgeway, P. | " |
| Ray, V. | " |
| Wolfe, S. | " |
| Hopson, L. | " |
| Mathis, M. | " |
| Hodges, E. | " |
| Evans, E. | " |
| Houck, R. | " |
| Wall, L. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Windham, G. | 1.5750 |
| Geddings, A. | " |
| Green, M. A. | " |
| Hodge, J. | " |
| Boyce, J. | " |
| Turner, S. | " |
| Thigpen, D. | " |
| Willard, T. | " |
| Taylor, B. L. | " |
| Pate, J. | " |
| Baker, C. | " |
| Driggers, M. E. | " |
| Ballard, E. | " |
| Gowdy, N. | " |
| Oxendine, B. | " |
| Brown, M. | " |
| Welch, E. L. | " |
| Oxendine, B. | " |
| Melton, M. | " |
| Atkinson, R. | " |
| Rogers, E. | " |
| Stokes, B. | " |
| Rowell, J. | " |
| Rape, B. | " |
| Medlin, H. | " |
| Pack, J. | " |
| Blackmon, B. | " |
| Greer, C. | " |
| Griffin, B. | " |
| Welsh, V. | " |
| Hodge, J. | " |
| Huckabee, M. | " |
| Gibson, L. M. | " |
| Williams, G. | " |
| Barnes, D. | " |
| Barnes, N. | " |
| Jackson, D. | " |
| Henderson, J. | " |
| Davis, E. M. | " |
| Amerson, M. | " |
| Harrington, L. | " |
| Anderson, J. G. | " |
| Ward, L. | " |
| Norris, L. L. | " |
| Turner, L. | " |
| Chambers, E. | " |
| Smith, J. | " |
| Carter, E. | " |
| Brewer, F. | " |
| Pack, S. | " |
| Timmons, I. M. | " |
| Amerson, S. | " |
| Kelley, G. | " |
| Gowdy, D. H. | " |
| Waynick, T. | " |
| Saxon, M. | " |
| Gudson, C. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Jones, A. | 1.5750 |
| Tidwell, S. | " |
| McAllister, A. | " |
| Bradley, H. | " |
| Geddings, R. | " |
| Geddings, B. | " |
| Weatherly, V. L. | " |
| Riley, E. T. | " |
| Johnson, E. | " |
| Johnson, V. | " |
| Short, D. | " |
| Murphree, J. | " |
| Sargent, A. | " |
| Wilson, E. | " |
| Hodge, L. | " |
| Kirby, D. | " |
| Romines, M. | " |
| Lindley, V. | " |
| Geddings, N. | " |
| Atkinson, J. B. | " |
| Welch, P. | " |
| Loftis, T. | " |
| Widener, J. | " |
| Burrows, E. | " |
| McCants, C. | " |
| Ray, E. | " |
| Frierson, D. | " |
| DuBose, N. | " |
| Shoemake, A. | " |
| Porter, M. | " |
| Brown, V. | " |
| Jake, H. | " |
| Smothers, J. | " |
| Riles, M. | " |
| Dunham, L. | " |
| Pope, S. | " |
| Pinkney, M. | " |
| Richardson, W. | " |
| Deas, L. B. | " |
| Miles, R. H. | " |
| Melton, M. | " |
| Cook, B. | " |
| Bridgeman, C. | " |
| Timmons, D. | " |
| Jackson, E. | " |
| Cribb, L. | " |
| Ray, S. | " |
| Carrington, S. | " |
| Clea, M. | " |
| Floyd, R. | " |
| Cook, G. | " |
| Mathis, C. | " |
| Martin, B. | 1.6550 |
| Garrison, J. | " |
| McCoy, H. | " |
| Ortiz, F. C. | " |
| Morris, E. P. | " |
| Owens, P. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Benenhaley, M. L. | 1.6550 |
| Poole, B. | " |
| Benenhaley, H. | " |
| McElveen, P. H. | " |
| Conyers, E. | " |
| Bradford, E. B. | " |
| Boyd, L. | " |
| Blanding, I. | " |
| Turner, J. | " |
| Nichols, S. J. | " |
| McDaniel, M. B. | " |
| Smith, R. L. | " |
| Pierson, V. M. | " |
| Hutton, J. | " |
| Richardson, L. | " |
| Wilkes, B. L. | " |
| Hughes, M. | " |
| Brown, F. D. | " |
| Copeland, L. F. | " |
| Wilson, D. | " |
| Evans, E. | " |
| Buckner, C. C. | " |
| Washington, E. | " |
| Evans, B. M. | " |
| Smith, E. L. | " |
| Smith, M. | " |
| Cokerill, M. | " |
| Anderson, B. | " |
| McLeod, P. | " |
| Hall, E. | " |
| Williams, J. C. | " |
| Porter, V. | " |
| Hodge, R. | " |
| McDowell, E. | " |
| Johnson, A. | " |
| Boone, A. M. | " |
| Hyde, T. | " |
| Vann, S. | " |
| Crosby, M. | " |
| Yates, C. | " |
| Crim, A. | " |
| Butler, S. | " |
| Scurry, A. | " |
| Lee, E. | " |
| Isaac, M. | " |
| Hensley, M. | " |
| Humphries, J. | " |
| Byrd, L. A. | " |
| Blackmon, S. | " |
| Croft, B. A. | " |
| Way, L. | " |
| Smith, A. | " |
| Bailey, M. K. | " |
| Turner, I. | " |
| Glisson, L. A. | " |
| Glisson, M. A. | " |
| Stephens, M. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Nichols, P. | 1.6550 |
| Barwick, N. | " |
| Barfield, I. | " |
| Davis, I. | " |
| Anderson, B. J. | " |
| McIntosh, M. | " |
| Welch, B. | " |
| Turner, L. | " |
| Green, M. | " |
| McCleary, V. | " |
| Bruce, A. | " |
| Gainey, B. | " |
| Hancock, J. C. | " |
| Cox, R. B. | " |
| Casselman, L. A. | " |
| Mooneyhan, D. | " |
| Peeples, O. | " |
| Hopkins, C. L. | " |
| Clasey, A. N. | " |
| Holladay, O. B. | " |
| Gainey, M. | " |
| Lowrey, M. M. | " |
| Bryant, R. M. | " |
| Parker, C. | " |
| Wood, B. | " |
| Cribb, I. M. | " |
| Conner, B. | " |
| Miles, M. G. | " |
| Gainey, L. | " |
| Lair, J. | " |
| Chatmon, A. | " |
| Richburg, D. | " |
| Weaver, S. M. | " |
| Geddings, J. | " |
| Evans, K. B. | " |
| Linton, T. | " |
| Adams, P. J. | " |
| Pritchard, R. | " |
| McHone, V. | " |
| Privette, B. | " |
| Tidwell, M. L. | " |
| Geddings, C. L. | " |
| Rogers, J. L. | " |
| Tervilliger, E. | " |
| Freeman, P. | " |
| Moore, M. | " |
| Gardner, M. | " |
| Jeffords, R. L. | " |
| Hudson, G. | " |
| Moore, B. | " |
| Coulson, J. | " |
| Meeks, D. | " |
| Bodenheimer, J. | " |
| Amerson, W. | " |
| Johnson, O. | " |
| Broadway, R. | " |
| Cook, T. H. | " |
| Staton, D. | " |
| Coker, H. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Grabeel, F. | 1.6550 |
| Amerson, S. | " |
| Stokes, C. L. | " |
| Hyde, N. | " |
| Mincey, W. | " |
| Solomon, T. | " |
| Thrower, J. L. | " |
| Bochette, J. | " |
| Geddings, R. | " |
| Shadoan, J. | " |
| Buckner, R. | " |
| Kjer, M. | " |
| Englehaupt, G. | " |
| Guinyard, M. | " |
| Allen, C. | " |
| Rogers, A. | " |
| Frye, J. | " |
| Hickson, R. | " |
| Singleton, T. | " |
| Branham, J. | " |
| Williams, H. M. | " |
| High, E. | " |
| Paranto, D. | " |
| Gainey, W. | " |
| Benenhaley, C. | " |
| Pearson, B. | " |
| Tidwell, T. | " |
| Morrow, J. | " |
| Trimnal, J. | " |
| McAllister, B. | " |
| Turner, E. | " |
| Bramlett, R. | " |
| White, P. | " |
| Britton, E. | " |
| Geddings, L. V. | " |
| Morris, W. | " |
| Fortune, I. | " |
| Sanders, J. | " |
| Klawinski, M. | " |
| Haley, R. | " |
| Myers, C. | " |
| Danner, C. | " |
| Locklair, J. A. | 1.7400 |
| Leviner, J. | " |
| McCormick, M. | " |
| Carpenter, L. | " |
| Turner, A. L. | " |
| Huggins, A. L. | " |
| Rice, J. | " |
| May, M. H. | " |
| Maybee, A. | " |
| Holladay, A. B. | " |
| Dollard, S. | " |
| Riddle, R. | " |
| Atkinson, B. | " |
| Steele, E. | " |
| Benenhaley, I. | " |
| Horton, L. | " |
| Lee, L. | " |
| Ward, O. | " |
| Griffin, D. P. | " |
| Doxey, S. | " |
| Wallace, J. | " |
| Ross, J. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Callen, E. J. | 1.7400 |
| Ridgeway, M. | " |
| Ray, S. | " |
| Geddings, M. S. | " |
| Gardner, J. | " |
| Geddings, N. | " |
| Rabon, B. | " |
| Ryles, L. | " |
| Frederick, M. | " |
| Ballentine, G. | " |
| Ray, B. | " |
| McPhail, B. | " |
| Blackmon, L. M. | " |
| Turner, V. | " |
| Adams, M. | " |
| Gaymon, L. | " |
| Rogers, H. | " |
| Stalvey, C. | " |
| Beal, J. | " |
| Underdue, C. | " |
| Corbett, D. | " |
| Hopkins, L. | " |
| Nathaniel, S. | " |
| Kolb, A. | " |
| Green, D. | " |
| Winkles, Jr., E. | " |
| Atkinson, T. | " |
| Farmer, E. | " |
| Stalvey, I. | " |
| Goldman, V. | " |
| Mozingo, R. | " |
| Baker, E. L. | " |
| Holladay, C. | " |
| Hardin, J. | " |
| Jeror, F. | " |
| Mack, C. | " |
| McClary, M. | " |
| Davis, C. F. | " |
| Brunson, G. | " |
| Connor, G. | " |
| Sims, J. | " |
| Hancock, J. C. | " |
| Finley, F. | " |
| Franklin, D. | " |
| Hampton, D. L. | " |
| Addy, B. | " |
| Mooneyham, M. | " |
| Atkinson, Sr., L. A. | " |
| Tidwell, L. | " |
| Stephen, O. | " |
| Welch, A. | " |
| Doucet, A. | " |
| Matlock, V. | " |
| Holladay, H. | " |
| Burroughs, J. | " |
| Lee, J. | " |
| Simplicio, L. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Collins, P. | 1.7400 |
| Wilson, H. | " |
| McGee, R. | " |
| Athinson, Jr., L. A. | " |
| Vaughn, W. | " |
| Tidwell, T. | " |
| Stalvey, C. | " |
| Boykin, B. | " |
| Brewer, W. | " |
| Brock, J. | " |
| Richardson, W. | " |
| Hodge, B. | " |
| Springs, A. | " |
| Solari, D. | " |
| Squires, F. | " |
| Miles, W. | " |
| Hopkins, T. | " |
| Coleman, C. | " |
| Beard, A. | " |
| Montalbano, J. | " |
| McLeod, E. | " |
| Holladay, T. | " |
| Benenhaley, L. | " |
| Hatfield, R. | " |
| Wilson, O. V. | " |
| Crim, M. | " |
| Nunnery, C. E. | " |
| Conyers, L. | " |
| Benenhaley, P. | " |
| Porter, L. | " |
| Morris, H. | " |
| Jones, M. E. | " |
| Evans, M. | " |
| Ward, H. H. | " |
| Alexander, K. | " |
| Sanders, C. | " |
| Baker, D. | " |
| Brewer, T. | " |
| Adams, L. | " |
| Rimar, M. | " |
| Ray, M. | " |
| Wagers, W. | " |
| Osekoski, H. E. | 1.8250 |
| Gainey, F. | " |
| Frady, M. W. | " |
| Taylor, D. | " |
| Coleman, F. L. | " |
| Moore, P. | " |
| Pope, E. | " |
| Skinner, G. B. | " |
| Atkinson, H. | " |
| Beard, J. | " |
| Cassidy, C. | " |
| McLeod, R. | " |
| Barkley, R. | " |
| Shirley, L. | " |
| Dollard, T. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Walker, A. | 1.8250 |
| Watford, R. | " |
| Taylor, H. | " |
| Parker, C. | " |
| Matthews, B. | " |
| Ray, C. | " |
| Anderson, W. | " |
| Anderson, R. E. | " |
| Harrington, J. | " |
| Conyers, C. | " |
| Carpenter, H. | 1.9150 |
| McCathern, B. B. | " |
| Pennell, G. | " |
| Williamson, B. E. | " |
| Cockrum, N. | " |
| Timmons, E. E. | " |
| Poplin, W. | " |
| Bailey, D. C. | " |
| Skinner, S. | " |
| Hawthorne, W. | " |
| Austin, J. | " |
| Nesbitt, J. A. | " |
| Holladay, C. | " |
| Boykin, B. | " |
| Martin, B. | " |
| Hudson, F. E. | " |
| Woodrow, R. | " |
| Smith, W. | " |
| Thames, W. | " |
| McCoy, J. | " |
| Mims, E. | " |
| Purvis, F. | " |
| Frierson, S. | " |
| Benbow, A. | " |
| Ramsey, J. | " |
| Mims, J. W. | " |
| Bryant, J. | " |
| Mathis, L. H. | " |
| McLhinney, D. | " |
| Hall, D. C. | " |
| Johnson, J. R. | 1.9450 |
| Anderson, C. V. | 2.0150 |
| Frank, M. | " |
| Dennis, I. N. | " |
| Nichols, R. C. | " |
| Bolden, D. B. | " |
| Paul, M. | " |
| Moore, A. | " |
| Frederick, R. D. | " |
| Stone, R. | " |
| Grant, J. | " |
| Hopkins, R. | " |
| Corbett, S. | " |
| Beard, C. | " |
| McCormic, J. L. | " |
| Taylor, W. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Robinson, K. E. | 2.0150 |
| Lindsay, E. L. | " |
| Nesbitt, M. | " |
| Jones, W. | " |
| Huntley, J. | " |
| Wetherby, B. | 2.1200 |
| Stone, A. L. | " |
| Bryant, C. | " |
| Compton, C. | " |
| Berry, H. | 2.1250 |
| McElveen, J. W. | 2.2250 |
| Robertson, W. | " |
| Hancock, H. | " |
| Coleman, Jr., M. | " |
| Lotwis, W. | " |
| Page, T. | " |
| Norris, T. | 2.4700 |
| Eanes, R. | " |
| Barkley, R. | " |
| Guinther, R. | " |
| Driggers, W. A. | " |
| Geddings, R. | " |
| Brown, S. A. | " |
| Wilson, D. D. | " |
| Milam, I. H. | " |
| Davis, H. L. | " |
| Geddings, P. | " |
| Geddings, F. | " |
| Barwick, R. | " |
| Beneski, T. J. | " |
| Jackson, Jr., L. | " |
| Weatherly, H.O. | " |
| Mathews, R. | " |
| Riddle, L. | " |
| Clardy, W. | " |
| Dill, C. E. | " |
| Hardin, R. L. | " |
| Walton, E. | " |
| Hodge, H. | " |
| Sears, J. | " |
| Russell, B. J. | " |
| Wilson, B. G. | " |
| Dunlap, P. J. | 2.7300 |
| Ridley, J. | " |
| Allen, A. | " |
| Suggs, E. | " |
| Goff, Jr., W. W. | " |
| Croft, M. | " |
| Grantham, G. F. | " |
| Gibbons, R. | " |
| Coleman, J. | " |
| Copeland, J. | " |
| Baird, R. E. | " |
| Jackson, H. | " |
| Wicker, E. | " |
| Svetlik, A. | 3.0000 |
| Parnell, J. J. | " |
| Madray, T. W. | " |

| Name | Starting Hourly Wage Rate |
|---|---|
| Cuttino, H. W. | 3.0000 |
| Frierson, W. | " |
| Ard, J. L. | " |
| Davis, J. | " |
| Collier, H. | 3.4000 |
| Johnston, R. M. | " |
| Weathersbee, H. A. | " |
| Foster, B. | " |

Interrogatory No. 34. This Defendant does not have sufficient information upon which to base an answer to this interrogatory.

Interrogatory No. 35. Tuition aid program aids employees financially in taking courses toward a high school or college degree or allied to the employee's present job or one to which the employee might logically be upgraded; supervisory training; safety training; on-the-job training by supervisors and instructors; and special training for low efficiency boners.

Interrogatory No. 36. Seniority, attendance and medical history.

Interrogatory No. 37. Yes.

Interrogatory No. 38. One office trainee and one technician.

Interrogatory No. 39. All.

Interrogatory No. 52. Yes, as to unemployment ratio only.

Interrogatory No. 71. See Answer to Interrogatory No. 68 filed on August 17, 1967. In addition, for clerical type jobs, the Purdue Clerical Adaptability Test is used.

Interrogatory No. 72. See Answer to Interrogatory No. 68.

Interrogatory No. 97. Yes. W. Blyther, Class 3, employed June 13, 1966; H. Grant, Class 6, employed June 6, 1966; W. Jones, Class 6, employed June 6, 1966; and R. Abram, Class 4, employed June 13, 1966.

Interrogatory No. 103. No.

Interrogatory No. 104. It is one factor for evaluating the employees' abilities and potentialities.

Interrogatory No. 105. Completion of an eighth grade education.

Interrogatory No. 108. Yes. W. Blyther, Class 3, employed on June 13, 1966; H. Grant, Class 6, employed on June 6, 1966; W. Jones, Class 6, employed on June 6, 1968; and R. Abram, Class 4, employed on June 13, 1966.

Interrogatory No. 113. No.

Dated this 15th day of January, 1968.

STATE OF SOUTH CAROLINA )
)
COUNTY OF GREENVILLE )

Personally appeared before me, Robert T. Thompson, who first being duly sworn states that he is one of the attorneys for Campbell Soup Company (Sumter Plant) Inc., one of the defendants in the above entitled and numbered cause, that he is duly authorized to make the above and foregoing answers to the interrogatories, that he has read said answers and is familiar therewith, and that to the best of his knowledge, information and beliefs said answers are true and correct.

Robert T. Thompson
Robert T. Thompson

Sworn to before me this 15th
day of January, 1968.

Margaret V. Sloan
Notary Public for South Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IDELL D. KINGWOOD, ET AL.,

Plaintiffs,

v.

CAMPBELL SOUP COMPANY, INC.,
A New Jersey Corporation, et al.,

Defendants.

CIVIL ACTION NO. 67-167

CERTIFICATE OF SERVICE

It is certified that copies of the foregoing Answers to Interrogatories have been served upon Ernest A. Finney, Jr., Esq., 16 1/2 West Liberty Street, Sumter, South Carolina, Matthew J. Perry, Esq., 1107 1/2 Washington Street, Columbia, South Carolina, and Carl Rachlin, Esq., 150 Nassau Street, New York, New York, the attorneys for the Plaintiffs, by mailing copies to them through the United States Mail, postage prepaid.

Dated this 15th day of January, 1968.

Robert T. Thompson

[1968, February 22]
Campbell Soup

OFFICE OF THE CLERK

UNITED STATES DISTRICT COURT

P. O. Box 1478 Columbia 29202

IDELL D. KINGWOOD, et al,
Plaintiff,

Civil Action No. 67-167

COLUMBIA DIVISION

vs.

CAMPBELL SOUP COMPANY, INC.,
et al,
Defendants.

NOTICE OF FILING

PLEASE TAKE NOTICE THAT I HAVE THIS DATE FILED

Judge Hemphill's Order in the above captioned case. Certified copies of the Order are enclosed herewith.

DATED: February 22, 1968

MILLER C. FOSTER, JR., CLERK

TO:
Ernest A. Finney, Jr., Esq.
Matthew J. Perry, Esq.
Carl Rachlin, Esq.
Robert T. Thompson, Esq.
Charles Horsky, Esq.

By: Barbara L. Barnett
Barbara L. Barnett
Deputy Clerk

Enclosure:

[1968, February 22]

Micro-film

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

FILED
FEB 22 1968
MILLER C. FOSTER, JR., CLERK

Idell D. Kingwood, et al.,

Plaintiffs,

versus CIVIL ACTION NO. 67-167

Campbell Soup Company, Inc.,
A New Jersey Corporation, et al.,

Defendants.

# ORDER

The plaintiffs have propounded certain interrogatories to the defendants in the above entitled and numbered cause, and the defendant Campbell Soup Company, (Sumter Plant), Inc., has moved for a reasonable extension of time in which to file answers. The Court granted an extension to January 15, 1968. The Plaintiff, based upon the voluminous nature of the record and the necessity to take further depositions, have requested an extension of time for completing the discovery to March 15, 1968. Upon consideration of the request, which is not objected to by defendants' attorney, and for good cause shown; it is

ORDERED that the time for completing discovery be, and the same is hereby extended to March 15, 1968.

Done and entered this 22 day of February, 1968.

Robert W. Hemphill
United States District Judge
The District Of South Carolina

Columbia, South Carolina

TRUE COPY
Test:
MILLER C. FOSTER, JR. CLERK
Barbara L. Barnett
By: Deputy Clerk

SEDFRE

KINGWOOD, IDELL, D. et.al. VS. CAMPBELL SOUP CO., INC. SUMTER, S. CAROLINA 1966
(JOB DISCRIMINATION)

Box 38
Folder 10

State Historical Society Of Wisconsin

**Please Retain Original Order**

UA 89-10-13 N UA

Spoke to EF
agree after Casi call
as changed
[illegible]

# Campbell's Soup Stipulation

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto, and the parties hereto, as follows:

Whereas the plaintiffs herein filed a complaint with the U. S. Equal Employment Opportunity Commission against the defendants herein alleging violations of Title 7 of the Civil Rights Act of 1964 (                                        ) and:

Whereas the said Equal Employment Opportunity Commission of the U. S. charged with the responsibility for investigating such complaints, caused on investigation of the same and thereafter advised the parties that probable cause existed under said Title 7 as to certain of said violations alleged against the defendants and:

Whereas that on or about the (        ) day of March, 1967 the plaintiffs by their attorneys, filed a complaint with the United States District Court for the District of South Carolina alleging violations of said Title 7 in that the defendants had required applicants for all positions of employment take an employment test, commonly called the "Wonderlic" test, and further requiring applicants to have completed eight grades of education; it was alleged in both instances that such described qualifications caused discrimination against Negro applicants in violation of law: the defendants by their answers denied all material allegations of the complaint.

Thereafter the parties hereto, according to law took depositions of designated persons with knowledge of the facts therein: that during the taking of the deposition of (                ), the said witness advised Counsel for the plaintiffs that the aforesaid "Wonderlic" test and the aforesaid eighth grade educational qualification as of (                    ) date had been discontinued and will no longer be required as a condition for obtaining employment with the Campbell Soup Company (Sumter plant). Accordingly the parties agreed as follows:

1. That the defendants herein will not, as a condition of obtaining employment require applicants to take any psychological test nor require an educational qualification ~~without the prior knowledge and consent of plaintiffs herein, or their Counsel.~~ as a prerequisite for consideration

2. All plaintiffs who have passed, or within 90 days from the date hereof shall have passed the so-called manual dexterity test given to all entry level employees shall be given employment by defendants at no lower than (          ) grade level. It is agreed that the following are to be offered employment:

(a)          (d)
(b)          (e)
(c)          (f)

no later than ~~July 1,~~ Aug 15, 1968 and they shall not be discharged except for just and sufficient cause.

3. That the following employees shall receive, in full settlement of any claim for back wages an amount not less than $__________:

______________________

______________________

______________________

______________________

$4,250

4. That the plaintiffs will receive the sum of $3,500.00 ~~$7,500.00~~ and for the expenses of litigation and counsel fees in full settlement of any claims thereof.

5. That at the expiration of ~~two~~ 1 (~~2~~) year~~s~~ from the date hereof, providing all the terms and conditions have been executed as set forth, an order may be entered without notice, without costs except as described herein against either parties, dismissing the action herein.

6. That the court herein shall retain jurisdiction of this case for a period of two (2) years from the date hereof, to supervise the settlement herein.

2nd Draft.

Campbell's Soup | Stipulation

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto and the parties hereto as follows:

Whereas the plaintiffs herein filed a complaint with the U.S. Equal Employment Opportunity Commission against the defendants herein alleging violations of Title 7 of the Civil Rights Act of 1964 (                    ) and

Whereas the said Equal Employment Opportunity Commission of the U.S. charged with the responsibility ~~of~~ for investigating such complaints, caused an investigat~~ed~~ion of the same and ~~found~~ thereafter advised the parties that ~~the~~ probable cause existed under said Title 7 ~~for some~~ as to certain of said violations ~~by~~ alleged against the defendants ~~of said Title 7~~ and

Whereas that on or about the (     ) date of March 1967 the plaintiffs by their attorneys, ~~having~~ filed a complaint with the United States District Court for the District of South Carolina alleging violations ~~for~~ of said Title 7 in that the ~~Company~~ defendants had required applicants for positions ~~certain~~ all employment take a employment ~~psychological~~ test, commonly called the "Wonderlic" test, and further requiring applicants to have completed eight grades of education; it was alleged in both ~~cases~~ instances described that such qualifications caused discrimination against Negro applicants in violating law; the defendants by their answers denied all material allegations of the complaint.

7

hereto, according to law took

Thereafter the parties ~~began the process of taking~~ depositions of, designated persons

taking

with knowledge of the facts therein: that during the ~~course~~ of the

deposition of (                    ), the said witness advised Counsel

for the plaintiffs that the aforesaid Wonderlic test and the aforesaid

eighth grade educational qualification as of (                    ) date

had been discontinued and will no longer be required as a condition for

obtaining employment with the Campbell Soup Company (Sumter plant).

Accordingly the parties agreed as follows:

1. That the defendants herein ~~(                    )~~ will not, as a condition of obtaining employment require applicants to take any psychological test nor require an educational qualification without the prior knowledge and ~~counsel~~ consent of plaintiffs herein, or their counsel

6. ~~2.~~ That the court herein shall retain jursidiction of this case for a period of 2 years from the date hereof, to supervise the settlement herein

3. ~~2.~~ All plaintiffs who have passed, or within 90 days from the date hereof ~~will~~ shall have passed the so-called manual dexterity test shall be given employment at

given to all entry level employees

(by defendants)

no lower than (          ) grade level. It is agreed that the folling are to be offered employment

(a)

(b)

(c)

(d)

(e)

(f)

no later than ~~-----------------~~ July 1, 1968, and they shall not be discharged except for just and sufficient cause

~~4~~ 3. That the following employees shall receive in full settlement of any claim for back wages ~~in the~~ an amount not less of $__________.

~~5~~ 4. That the plaintiffs will receive the sum of $7,500.00 and for the expenses of litigation and counsel fees in full settlement of any claims thereof.

5. That at the expiration of 2 years from the date hereof, and ~~The~~ providing all the terms and conditions have been executed as set forth, an order may be entered, without costs against either party, dismissing the action herein.

except as decreed herein

**DRAFT**

______________________ ' Atty

Campbell's Soup' Stipulation

"

______________________ '

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto and the parties as follows: # Whereas the plaintives herein filed a complaint against the defendants herein alleging violations of Title 7 of the Civil Rights Act of 1964 (                    ) and # Whereas the Equal Employment Opportunity Commission charged with the responsibility of investigating such complaints, investigated the same and found that the probable cause existed under said Title 7 for violations by the defendant and said Title 7 and Whereas ~~furthermore~~ that on or about the --------- date of March 1967 the plaintives pfs by their before attorneys having filed a complaint with the United States District Court for the District of South Carolina alleging violations for said Title 7 in that the Company had required ~~complainants-~~ applicants for positions ~~should~~ take a psychological test, commonly called the Wonderlic test and further requiring applicants to have completed eight grades of education, which it was alleged in both cases caused That such qualification discrimination against Negro applicants: the defendants by their answers denied ~~any substance~~ of all material ~~and~~ allegations of the complainant: + # thereafter the parties ~~soon; and the partie~~s according to law ~~having~~ began the process of taking depositions of persons with knowledge of the facts therein: that during the course of the deposition (                    ) the said witness advised Counsel for the plaintiffs that the afore said Wonderlic test and the aforesaid eighth grade educational qualification as of (                    ) date had been discontinued and will no longer be required as a condition for obtaining employment with the Campbell Soup Company (Sumpter plant).

Accordingly the parties agreed as follows:

1. That the defendants herein (                    ) will not, ~~not require~~ as a condition of obtaining employment, require applicants to take ~~the so-called Wonderlic~~ any psychological test nor require an ~~have an eighth grade~~ educational qualification, without the knowledge & consent of plaintiffs herein

2/ That the court herein shall retain jurisdiction of this case for a period of 2 years from the date hereof.

3. All plaintiffs ~~plaintives~~ who have passed or within 90 days ~~will~~

have passed

....

from the date hereof will have passed
the so-called manual dexterity
test shall be given employment
at no lower than ______
grade level It is agreed that
the following are ~~included~~ to be offered employment

4 - That the following employees
shall receive in full settle-
ment of any claim for
back wages the amount of
$ ______

5 - That the plaintiffs will
receive the sum of $ ______
and for ~~the~~ the expenses of
litigation and counsel fees
in full settlement of any claims
thereof

(a)
(b)
(c)
(d)
(e)
(f)
~~(g)~~ no later than ______, 1968

HB&WP

Filed July 27, 1966

IN THE

UNITED STATES DISTRICT COURT

FOR THE

EASTERN DISTRICT OF NORTH CAROLINA

WILMINGTON DIVISION

| | |
|---|---|
| BURDELL HARVEY, JR., Plaintiff,<br>v.<br>SEARS, ROEBUCK AND CO., a corporation, Defendant. | CIVIL ACTION<br>NO. ________ |

## COMPLAINT

### I

Jurisdiction of this Court is invoked pursuant to 28 U. S. C. §1343(4) and 42 U. S. C. §2000e-5(f). This is a suit in equity authorized and instituted pursuant to Title VII of the Act known as "The Civil Rights Act of 1964," 42 U. S. C. §§2000e et seq. Jurisdiction of this Court is invoked to secure protection of and redress the deprivation of rights secured by 42 U. S. C. §§2000e et seq. providing for injunctive and other relief against racial discrimination in employment.

### II

The plaintiff brings this action on his own behalf and on behalf of others similarly situated pursuant to Rule 23 (b)(2) of the Federal Rules of Civil Procedure. There are common questions of law and fact affecting the rights of other Negro persons seeking equal employment opportunity with the defendant without discrimination on the basis of race or color who are so numerous as to make it impracticable to bring them all before this Court. A common relief is sought. The interests of said class are adequately represented by the plaintiff.

III

This is a proceeding for a preliminary and permanent injunction restraining the defendant from maintaining any policy, practice, custom and usage of (a) discriminating against plaintiff and others similarly situated because of race or color; and (b) limiting, segregating and classifying Negro persons in ways which deprive and tend to deprive plaintiff and others similarly situated of equal employment opportunity on the basis of race or color.

IV

Plaintiff, Burdell Harvey, Jr., is a Negro citizen of the United States and the State of North Carolina residing in the City of Wilmington, North Carolina.

V

Defendant, Sears, Roebuck and Co. is a corporation duly authorized to conduct business in the State of North Carolina. Defendant maintains and operates several stores throughout the State of North Carolina including one such store located in the City of Wilmington, North Carolina.

VI

Defendant is an employer engaged in an industry which affects interstate commerce and defendant employs more than 100 employees.

VII

A. On or about September 9, 1965, plaintiff applied for employment as a salesclerk at the defendant store located at the Oleander Shopping Center in Wilmington, North Carolina. The plaintiff was allowed to fill out an application and was told by the interviewer that there were no openings, but that his application would be filed. During the month of September, 1965, subsequent to the date plaintiff applied for the position as salesclerk, the defendant interviewed, tested and hired white persons for the position of salesclerk, employment for which plaintiff had applied and could have been hired. Plaintiff was not notified of these openings. The refusal of the defendant to notify plaintiff of the opening and/or hire plaintiff was intended to deny and had the effect of denying the plaintiff employment because of race and color.

B. Negroes other than the plaintiff have sought employment as salesclerks at the defendant store in Wilmington, North Carolina, and have been refused employment on the bases of race and color. If Negroes are employed as salesclerks with the defendant, such employment is on a token basis only.

C. The refusal of the defendant to employ the plaintiff as a salesclerk was pursuant to the defendant's long standing practice, policy, custom and usage of denying and limiting the employment opportunity of Negro persons because of race and color. Pursuant to the policy, practice, custom and usage Negroes other than the plaintiff have been denied employment by the defendant on the bases of race and color.

## VIII

The plaintiff is fully qualified for the employment he sought. Plaintiff and other Negro persons have been denied employment opportunity by the defendant because of race and color in violation of Title VII of the Act known as "The Civil Rights Act of 1964," 42 U. S. C. §§2000e et seq.

## IX

Neither the State of North Carolina nor the City of Wilmington, North Carolina has a law prohibiting the unlawful practices alleged herein. On Octuber 28, 1965, the plaintiff filed a complaint with the Equal Employment Opportunity Commission alleging denial by the defendant of his rights under Title VII of "The Civil Rights Act of 1964," 42 U. S. C. §§2000e et seq. On or about June 16, 1966, the Commission found reasonable cause to believe that a violation of the Act had occurred by the defendant. Subsequemtly the Commission notified the plaintiff that the defendant's compliance with Title VII of "The Civil Rights Act of 1964" had not been accomplished within the time allowed to the Commission and that the plaintiff is entitled to maintain a civil action for relief in a United States District Court.

## X

Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs alleged, and this suit for a preliminary and permanent injunction is his only means of securing adequate relief. Plaintiff and the class he represents are now suffering and will continue to suffer irreparable injury from defendant's policy, practice, custom and usage as set forth herein.

WHEREFORE, plaintiff respectfully prays this Court advance this case on the docket, order a speedy hearing at the earliest practicable date, cause this case to be in every way expedited, and upon such hearing to:

1. Grant plaintiff and the class he represents a preliminary and permanent injunction enjoining the defendant, Sears, Roebuck and Co., its agents, successors, employees, attorneys and those acting in concert with them and at their direction from continuing or maintaining the policy, practice, custom and usage of denying, abridging, withholding, conditioning, limiting or otherwise interfering with the right of plaintiff to employment as a salesclerk at defendant's stores in Wilmington, North Carolina, on the bases of race and color.

2. Grant plaintiff and the class he represents a preliminary and permanent injunction enjoining defendant, Sears, Roebuck and Co., its agents, successors, employees, attorneys, and those acting in concert with them and at their direction from continuing or maintaining the policy, practice, custom and usage of denying, abridging, withholding, conditioning, limiting or otherwise interfering with the rights of the plaintiff and others similarly situated to enjoy equal employment opportunity as secured by Title VII of the Act known as "The Civil Rights Act of 1964," 42 U. S. C. §§2000e et seq., without discrimination on the basis of race or color, including but not limited to the maintenance of any policy, practice, custom or usage of refusing to employ Negro salesclerks and staff personnel or limiting the number of same in the State of North Carolina on the bases of race and color.

3. Grant Burdell Harvey, Jr. back pay from the time of defendant's wrongful denial of employment to the present.

4. Allow plaintiff his costs herein, including reasonable attorney's fees and such other additional relief as may appear to the Court to be equitable and just.

Respectfully submitted,

CONRAD O. PEARSON
203 1/2 East Chapel Hill Street
Durham, North Carolina

LISBON C. BERRY, JR.
511 1/2 North 4th Street
Wilmington, North Carolina

J. LEVONNE CHAMBERS
405 1/2 East Trade Street
Charlotte, North Carolina

JACK GREENBERG
LEROY CLARK
ROBERT BELTON
10 Columbus Circle
New York, New York 10019

Attorneys for Plaintiffs

IN THE

UNITED STATES DISTRICT COURT

FOR THE

MIDDLE DISTRICT OF NORTH CAROLINA

GREENSBORO DIVISION

WILLIE S. GRIGGS; JAMES S. TUCKER; HERMAN E. MARTIN; WILLIAM C. PURCELL; CLARENCE M. JACKSON; ROBERT A. JUMPER; LEWIS H. HAIRSTON, JR.; WILLIE R. BOYD; JUNIOR BLACKSTOCK; JOHN D. HATCHETT; CLARENCE C. PURCELL; EDDIE GALLOWAY; and EDDIE W. BROADNAX,

Plaintiffs,

v.

DUKE POWER COMPANY, a corporation,

Defendant.

CIVIL ACTION

NO. C-210-G-66

## COMPLAINT

### I.

Jurisdiction of this Court is invoked pursuant to 28 U. S. C. §1343 (4) and 42 U. S. C. §2000e-5(f). This is a suit in equity authorized and instituted pursuant to Title VII of the Civil Rights Act of 1964, 42 U. S. C. §§2000e et seq. Jurisdiction of this Court is invoked to secure the protection of and redress the deprivation of rights secured by 42 U. S. C. §§2000e et seq., providing for injunctive and other relief against racial discrimination in employment.

### II.

Plaintiffs bring this action on their own behalf and on behalf of other persons similarly situated who are employed by defendant Duke Power Company at its Draper, North Carolina plant, pursuant to Rule 23(a) and (b) of the Federal Rules of Civil Procedure. There are common questions of law and fact affecting the rights of other Negroes of the class who are and have been limited, classified and discriminated against in ways which deprive and which tend to deprive them of equal employment opportunities and otherwise affect their status as employees because of race and color. These persons are so numerous as to make it impracticable to bring them all before this Court. A common relief is sought and the interests of the class are adequately represented by plaintiffs.

## III.

This is a proceeding for injunctive relief, restraining defendant from maintaining any policy, practice, custom or usage of: discriminating against plaintiffs and others of their class because of race with respect to compensations, terms, conditions and privileges of employment and limiting, segregating and classifying employees of defendant in ways which deprive plaintiffs and other Negro persons similarly situated of employment opportunities and otherwise adversely affect their status as employees because of race and color.

## IV.

Plaintiffs Willie S. Griggs, James S. Tucker, Herman E. Martin, William C. Purcell, Clarence M. Jackson, Robert A. Jumper, Lewis H. Hairston, Willie R. Boyd, Junior Blackstock, John D. Hatchett, Clarence C. Purcell, Eddie Galloway, and Eddie W. Broadnax are Negro citizens of the United States, residing in Rockingham County, North Carolina. Plaintiffs and the class they represent are presently employed by defendant.

## V.

Defendant Duke Power Company is a corporation incorporated and doing business pursuant to the laws of the State of North

Carolina. The defendant operates and maintains plants and other facilities located in Draper and other cities of North Carolina. The defendant is an employer within the meaning of 42 U. S. C. §2000e-(b) in that the Company is engaged in an industry affecting commerce and employs more than 100 persons.

## VI.

Defendant has pursued and is presently pursuing a policy, practice, custom and usage of discriminating against and limiting the employment and promotional opportunities of plaintiffs and other Negro employees of defendant solely because of race or color.

A. Defendant has followed and is presently following a policy and practice of hiring and limiting its Negro employees to menial and low paying jobs and paying them less wages than white employees performing the same or similar work.

B. All Negro employees are limited primarily to the coal handling department and are classified as semi-skilled or common laborers. As such, they are not allowed or permitted, by Company rules, to bid on job openings in or to be advanced to other job classifications carrying better conditions, wages, terms and privileges of employment. All other jobs, held only by white employees of defendant, including that of watchmen, are classified above the semi-skilled and common laborer titles and only white employees are eligible for job-progression in these classifications.

C. Defendant refuses its Negro employees the opportunity for overtime on the same basis as such opportunities are provided for white employees.

D. Defendant maintains separate facilities, including shower rooms, locker rooms, drinking fountains and other facilities for its Negro and white employees.

## VII.

The defendant has instituted a test requirement which Negro employees must take and pass before they are considered for job vacancies or classified in positions heretofore limited to white employees. Plaintiffs believe and allege that the test is not professionally developed as required under 42 U. S. C. §2000e-2(h) and that the test, the administration and action upon the results are intended to discriminate against Negro employees because of race and color.

## VIII.

The defendant's discriminatory policies and practices herein set forth were intended to and have and will have the effect of discriminating against plaintiffs and others of their class with respect to terms, wages, conditions, advantages, and opportunities of employment solely because of their race and color in violation of their rights to equal employment opportunities secured to them by Title VII of the Civil Rights Act of 1964, 42 U. S. C. §§2000(e) et seq.

## IX.

Neither the State of North Carolina nor the County of Rockingham nor the City of Draper has a law prohibiting the unlawful practices alleged herein. On March 15, 1966, plaintiffs filed a complaint with the Equal Employment Opportunity Commission alleging violation by the defendant of plaintiff's rights under Title VII of the Civil Rights Act of 1964, 42 U. S. C. §2000(e) et seq. On or about September 24, 1966, plaintiffs were advised that the Commission found reasonable cause to believe that violation of the Act had occurred and that the Commission had been unable to achieve voluntary compliance by defendant through conciliations as provided by the Act. Plaintiffs were further advised that they were entitled to initiate a civil action in the

United States District Court as provided by 42 U. S. C. §2000e-5(f) of the Act.

## X.

Plaintiffs and the class they represent have no plain, adequate or complete remedy at law to redress the wrongs alleged herein and this suit for injunctive relief is their only means of securing adequate relief. Plaintiffs and the class they represent are now suffering and will continue to suffer irreparable injuries from defendant's policies, practices, customs and usage as set forth herein unless and until enjoined by the Court.

WHEREFORE, plaintiffs respectfully pray the Court advance this cause on the docket, order a speedy hearing at the earliest practicable date, cause this matter to be in every way expedited and upon such hearing to:

(1) Grant plaintiffs and the class they represent injunctive relief, enjoining the defendant, Duke Power Company, its agents, successors, employees, attorneys and those acting in concert and participation with them and at their direction, from continuing or maintaining any policy, practice, custom or usage of denying, abridging, withholding, conditioning, limiting or otherwise interfering with the rights of plaintiffs and others of their class to equal employment opportunities as secured by Title VII of the Civil Rights Act of 1964, 42 U. S. C. §2000e et seq.

(2) Grant plaintiffs and the class they represent injunctive relief enjoining the defendant, its agents, successors, employees, attorneys and those acting in concert and participation with them and at their direction, from maintaining, sanctioning and authorizing a policy or practice of hiring or limiting Negro employees to certain positions and job classifications and maintaining separate lines or job-progressions of advancement or otherwise limiting the rights of Negro employees

to be advanced to other job classifications and positions or imposing conditions for such advancement upon Negro employees not required of white employees similarly situated, solely because of race or color.

3. Grant plaintiffs and the class they represent injunctive relief enjoining the defendant, its agents, employees, successors, attorneys and those acting in concert and participation with them and at their direction from continuing or maintaining any policy, practice, custom or usage of paying Negroes less wages than white employees performing the same or similar work.

4. Grant plaintiffs and the class they represent injunctive relief enjoining the defendant, its agents, successors, employees, attorneys and those acting in concert and participation with them and at their direction from continuing or maintaining racially segregated employee facilities, including shower rooms, locker rooms, drinking fountains and other facilities.

5. Allow plaintiffs their cost herein, including reasonable attorneys' fees and such other additional relief as may appear to the Court equitable and just.

Respectfully submitted,

CONRAD O. PEARSON
203 1/2 East Chapel Hill Street
Durham, North Carolina

SAMMIE CHESS
622 East Washington Street
High Point, North Carolina

J. LEVONNE CHAMBERS
405 1/2 East Trade Street
Charlotte, North Carolina

JACK GREENBERG
LEROY D. CLARK
ROBERT BELTON
10 Columbus Circle
New York, New York

Attorneys for Plaintiffs

A charge

1. Dexterity Test
   passed
2. Wonderlic,
   (a) N's sometimes not hired even tho passed
   (b) N's hired
      i) without test
      ii) or even if they came after N's

3. Co used local state employment service
   (a) can't sit
   (b) rudeness
   (c) offered domestic work
   (d) long delay in referrals or even none

4. Ag'r between Co & politicos to limit no. of N's

B ~~Mr~~ Swanson

~~passed dexterity~~
~~Maebell Williams~~ → failed Wonderlic
~~no~~ insufficient education

~~Maebell Wms~~

passed dexterity
1 M Wms

13 Beulah Rhodes

2 Virginia Burgess

3 Ruth Wright

4 Catherine Preston

5 Mary Blanding

6 Margaret Wright

7 Hattie S Preston

8 Mary E Hicks

9 Ethel Mae Burgess

10 Carrie Mae Daney

11 Gussie L Mickel
~~Hall~~ 12. James Parham

Did not take dexterity

x ~~Little Mae Pitts~~

x ~~Mary Lee Green~~

Mrs ~~Wilbur Davis~~

x ~~& Phoebe Davis~~

1. Gladys Romeo - under consideration

2 - Deelores Brailsford " "

~~Hattie Preston - never applied~~

3 Nora Perry - nothing at all

4 Silas Walker - said he applied

Failed dexterity

1. Alice Jackson
2. Annie Mae Goings
3. Hattie McCoy
4. Mary McCants
5. Joelyn Dancy

~~Meta Brunson~~

Title
Court

Civil Action
No ______

# COMPLAINT

I This action, in equity, is brought pursuant ~~to~~ to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e etc. and ~~jurisdiction accordingly~~ ~~the Court~~ such stated sections give this Court jurisdiction of the matter, ~~as well~~ together with ~~§~~ § 1343(4) providing for injunctive relief, both ~~temporary~~ preliminary and permanent, in a cause of action as alleged below.

II Many persons of the Negro race have been denied rights under said Title VII and accordingly Plaintiffs all members of the Negro race, ~~who~~ have been denied or ~~will be denied~~ employment because of their race at the plant of Defendant located at ______ and bring this action upon behalf of themselves and all other persons similarly situated, i.e. Negroes denied or who will be denied employment at the ___ plant of Defendant because of their race and color. There being common questions of law and fact affecting all other members of ~~the~~ class so described who have been or will be illegally discriminated against all in violation of said Title VII of the Civil Rights Act of 1964, pursuant to Rules 23(a) and (b) of the Federal Rules of Civil Procedure all such persons, too numerous to be brought before this Court, are adequately represented by plaintiffs, and for whom a ~~sim~~ common relief is sought.

III Plaintiffs seek injunctive relief against Defendant, both ~~prelimin~~ preliminary and permanent, ~~against~~ because of the maintenance of practices, customs usages, procedure, employment tests, standards and requirements maintained by defendants herein which denied plaintiffs, and the other members of the class of employment, together with all the terms, rights, privileges and conditions thereof

③

but not limited to
including, in terms of compensation, vacation, sick pay, vacation pay, pension, social security, ~~and~~ seniority rights and the like, all of which acts etc referred to are in violation of ~~[illegible]~~ the said Title VII.

IV ~~Plain~~ Plaintiffs

1.

2

3.

4.

5.

6.

7.

~~are~~ are as are ~~[illegible]~~ all members of the class they represent, Negro citizens of the U.S. and of South Carolina and have been denied employment at the ______ plant of Defendant because of their race and color

V. Defendant (upon information and belief) is a corporation organized under the laws of the State of ______ and maintains its main place of business manufacture of a variety of food products, canned and frozen at Camden, New Jersey. In or about ______ The Swanson Division of said Defendant opened a plant in the vicinity of Sumter South Carolina for the manufacture and production of various of the products of said Defendant, which company is engaged in interstate commerce and in an industry affecting in~~terstate~~ commerce within the

meaning of said Title U.S.C. § 2000e et seq.

VI In pursuance of the purposes set forth in V above, Defendant hired, offered to hire and sought employees for said new plant at ______, but that the means and methods used, the policies pursued, the tests required, the standards put into practice~~s~~, ~~The~~ the local customs and usages upheld intended to and had the result of discriminating and denied plaintiffs, ~~[illegible]~~ and the members of the class they represent, employment and all the benefits attendant thereto as a result thereof.

~~VII~~ That amongst ~~these practices~~ the various types of improper and illegal conduct referred to above were

artificial educational standards, ~~as~~ for the ~~past~~ skills required by defendants,
(b) unnecessary standards of health
(c) application of ~~iate~~ so-called an intelligence ~~tests~~ or tests designed to or which knowingly discriminate ~~tory~~ against Negroes in favor of white persons
d The knowing use of certain employment agency or agencies which delay, retard or ignore ~~the referral of a Negro job applicant~~ or otherwise improperly treat Negro applicants
(e) ~~that~~ hiring whites ~~subsequent to~~ applying ~~to~~ subsequently to Negro applicants otherwise qualified ~~and~~ and
(f) by other improper and discriminatory application of employment procedures ~~and~~ and practices.

~~viii~~ The practices, procedures, conduct, the upholding of local discriminatory usages and customs ~~as~~ above referred to were intended to cause ~~to~~, will have the effect of causing and were the result of an ~~an~~ intent to cause discrimination because of the race and color of plaintiffs and that of the all in violation of and for the purpose of depriving them of rights accorded them under Title VII of the Civil Rights Act of 1964 U.S.C. § 2000e) et seq.

IX (a) The State of South Carolina, nor any subdivision, ~~count~~ whether county, city, town or village, and particularly ——— County ——— City have any law prohibiting any of the acts or conduct prohibited by the said Title VII, ~~E~~ 42 U.S.C. § 2000e),

(b) That on or about October 4, 1966 the plaintiffs caused the filing of a complaint alleging the violations of the said Title VII ~~Rt~~ 42 U.S.C. 2000(e) referred to with the Equal Employment Opportunity Commission

(c) That on December 6, 1966, Plaintiffs were advised by the said Commission that probable cause that Defendants have violated said Title VII;

(d) ~~hence~~ that no voluntary compliance by Defendants has taken place

~~IX~~ X Plaintiffs ~~have~~ and the class they represent, have no adequate remedy at law to redress the wrongs (that they will continue irreparable harm

set forth above, and pursuant to said Title VII, bring this suit for preliminary and permanent injunctive relief to ~~above~~ obtain fair and adequate relief which will be denied them, as it has in the past, unless defendant's practices, ~~be~~ rules, procedures, and its upholding of local customs and usages are enjoined ~~early and discontinued by~~ by this court and discontinued.

WHEREFORE

1. PLAINTIFFS ~~PP~~ pray respectfully of this Court that ~~this cause~~ the preliminary and permanent injunction be granted herein ~~and~~ as requested and that a speedy hearing and trial in of the issues herein be directed:

2. That ~~Plaintiff~~ Defendant its agents, officers, attorneys, representatives, employees, its successors and assigns, and all agencies, corporations or other institutions, persons charged with locating and referring potential employees to the said Defendant, at its plant ~~at~~ near Sumter, South Carolina ~~be~~ be ~~hereby~~ restrained and enjoined from ~~cant~~ maintaining, continuing to maintain~~ing~~ and practice

(over) (over)

8

defendants the

test or standard
rule, procedure, or any custom or usage
of the community or any larger area ~~or~~
~~which~~ ~~from~~ denies, withholds, prevents or
limits the right
in ~~any~~ ~~refusing~~ to accept for employment
~~any~~ Plaintiffs or any member of the
class they represent, because of their
race or color, including, but not
limited to, educational and/or psychological
and/or achievement tests given for the
purpose of ~~excluding plaintiffs~~ or as
the result of an intent to, or have

¶ caused discrimination against
plaintiffs because of their race or color,
and ~~enjoin~~ That
~~their~~ its defendants etc
and

2. Defendants be further restrained
and enjoined from maintaining or
continuing to maintain any practice,
procedure, rule or custom of
treating ~~white applicants~~ Negro applicants
for ~~po~~ employment different from
white applicants including but not
limited to the order of consideration of
applications, the nature and kinds of
tests and standards to be applied, or
the lack of such tests or standards and

3. That this Court retain jurisdiction of

of this cause of action for such
reasonable time as may be
necessary to enforce the provisions
of 42 U.S.C. §2000e et seq as may
be applicable herein, and that the
said ~~Com~~ Defendant, its servants, agents,
attorneys, employees and all ~~persons~~
~~in concert with~~ firms, institutions, agencies
corporations and persons who may be in
concert with them or any way
participate in the locating, training
screening and hiring of persons as
employees for Defendants, ~~not institute~~
~~any educational, psychological or~~
~~etc~~ be enjoined and restrained from
instituting any psychological, educational
health or other ~~sa~~ fitness standard, test, whether
oral or in writing ~~unless~~ ~~u~~ unless
and until this Court, after notice
to Attorneys for Plaintiffs, shall
approve the same and

3 Plaintiffs have such other relief as may
be just and proper, including reasonable
attorneys' fees, the expenses of this action,
and ~~co~~ the costs herein

Respectfully yours

American Psychologist
Vol 20 #11
Nov '65

corp re Campbell
& Psychological Corp is 5/

~~Calder~~ Horwich

Wunderlic test
score less than "11" - this was cut - 11 - plus 8th grade education

after complaint - Co said it was exploring alternate - picked Psych. Corp.

Is there a culturally corrected test?

George Bennett
measure verbal abilities numerical abilities
sought to eliminate cultural attributes

cf re Wunderlic - item #4
"A.S.U.P." Wunderlic Test culturally biased

No literacy requirement - on tape - possible ~~fo~~ score #169

same word test
spelling
&

Dr. Dopel
Bennett
Buchan
prepared test with assistants

Job caps test
not intended to be specific
for any job — tests familiarity with
verbal & numerical symbols

Adj'd to Commodore Hotel
1 Holcombe, Ireland, Wilson, Heneghan
Wyatt
EEOC
2. Finney & Rochlin — Petty
3. Harwick & Calder — Campbell

Harwich — 1 — Educational — he can
eliminate 8th grade
It will be a consideration for employment, but not
a

2 — Wonderlic — score of #11 — hopes
that psych cap — would be a substitute

since it [illegible] a better job, but it is not validated

no reason of stay with Wonderlic
why they must keep score of it"

Wilson why is Wonderlic important at all for the future

(a) Drop educational test

H. — need some sort of measure - maybe drop Wonderlic — ? try out Psych Corp test. (b) "Wonderlic can disappear"

(c) will want to accept references in the most acceptable method possible

(d) Negro in personnel area? — Can do this — but no vacancy — possible transfer to this position

(e) Medical Doctor — Co will instruct Dr to tell applicant of any condition — or for any reason for rejection

(f) chronological consideration — everything else being equal, chronological consideration may be important
won't do it in hiring

(g) on 24 pts — will put these
24 thru the entire process again

Will not make a commitment to hire

Finally agreed

1 - drop
2 - drop 8th grade
underlie —
{not altogether certain as to this
3 - Fummey & Harwick to go
over ~~to~~ PETH as to hiring
4 - Co & Wilson to ~~for~~ go
over others 17

5 - CR - Co must pay
expenses & fees of counsel

6 - mtgs on this & plenum
soon!

# Campbell Soup

Richard Gwozdz —
Personnel Mgr
Sumter Plant

Hunt Fords personnel - 3 yrs
B.S. in bus ed.
Campbell Soup 7/59
Chester, Pa

won't permit Gwozdz to
answer about use of the Wonderlic
test - whole series of
questions

here at beginning of plant

In spring '66 hired
mechanics — had to have
tech training program
mech apt. tests
+ the Wonderlic
blue print reading
abstract objects

next group - June '66
gen'l cleanup crew
(Daniels construction Co crew)

next 6/20/66 - minor
mfg process people
women + men from tech
training program
approx same as for
Daniels crew

7/1 Wonderlic became effective
Discussed here, + then to
V.P in charge of personnel
Haspatch
No evaluation of Wonderlic
by him or anyone - to his
knowledge - he or

cut-off of 11 - equalled
on academic level of 8 grades -
has no knowledge of 9th grades
locally or nationally

bought test felt Wonderlic
gave ease in scoring ease in

handling - eighth 8th gr
did not check with county people

get ads //

Ad in newspaper of May '66

then ads for specific skill ads

get job description

eighth grade - set in 7/15/66

this evolved after taking thousands of applications

what clothes have

Personnel made decision as to 8th grade -

get plans used

Did not know of achievement level educationally of 3 counties

Doesn't recall if he knew of level

spoke to school people put out of this question

Since 7/15 a few inadvertently hired -

30 people in Class I
unskilled
dressing - killing - 4-6 people
receive bird
feathers

(1) killing instruction - orally
thru a leader + supervisor

(2) next step ~~picker~~ scalder
to picker
~~feather~~ technician
handles scalder -

humans handles + assess
quality of chicken 4-6 women
[Class I]
visual observations - color,
pin feathers - take out pin
feathers
instruction on total involved
process
(a) conference room -
slide tape presentation with
supervisor
(b) actual job experience
with supervisor
(c) back to conference to

review

(d) then back to line

(c) no written tests

cutting & opening bird (part of eviscerating) - opened & cleaned

instructed as above

can be about 50 people on each line

3 lines

must be able to comprehend instruction

bird chilled

either 4 dinner

boning operation

hands & eye

re particular [illegible] written instructions - written instructions given to instructor

must comprehend instructions

must understand physiology of birds - bones, [illegible] veins etc

~~Ope~~ Dinner room - line
operation - about 25 people per
line

just T.V dinner together

girl has to get continuation
in plate

placement on plate
adequate weight
have to be aware of machine
is operating [illegible]ly

wheeled

Custodial staff - eighth grade
did not dictionary of
occupational titles D

level of degree ~~to~~ be [illegible] or academic
8th grade
No relation to production of
food
No job relation

who decided policies as to hiring

Wunderlic

~~what~~

people hired ~~on~~ before
Wunderlic is eighth
still with them

what do they have to read

what are job descriptions

what did he know of Wunderlic

how many hired before July 11 for Class I

people testing - trained

Use of Chamber of Commerce

William B. Murphy
president of Campbell
Soup Company

1 — Divisions of Company?
including that of subsidiaries?

2 — Locations of each division of
Company

3 — Numbers of employees in
each location

4 — (a) Swanson division — what are
job classifications in each division
in ~~or~~ ascending order of skill
(b) what are job classifications in
other divisions of company in
ascending order of skill

5 — In each plant or division how
many employees perform ~~to~~ the work
of chicken plucking, regardless of what
the job is called?

Identify them by plant

6. ~~In each category / each plant how many white and how many Negro employees~~

6 In each plant for each category state the minimum qualifications for hiring or being placed in the position

7. In each category, plant by plant how many white and how many Negro employees

8. In which plants and for which positions are there minimum

educational qualifications

9. Set forth ~~these~~ qualifications plant by plant

10. When ~~at~~ were they instituted, plant by plant

11. Tell us, category by category, how many whites and how many Negroes, plant by plant, ~~category by category~~ were employed prior to and subsequent to the instituting of such minimum qualifications

12 Plant by plant, category by category are ~~their~~ oral or written tests given to employees or prospective employees in order to be placed in a particular category

13 - Plant by plant, category by category, when were such oral or written tests instituted

14 - ~~What are~~ ~~Give us the tests~~ What tests have been used plant by plant category by category

15 - Plant by plant, category by category, prior and subsequent to the instituting of such tests how many whites and how many Negroes were employed

16 - Who decides what the qualifications are in each category, and in ~~th~~ each plant?

Mississippi
Election
Barry Gray
Show

~~tat~~
4/15 Madison

1st primary

16 H persons nominated
(sel wer) 21 more made runoffs
all Democratic party,

almost all J.P. or Constable
Chief police for subdivision

Claiborne
Jefferson
Adams
Wilkinson

No one won in second
1 or 2 for supervisor of Counties

MFDP — people running
as independents
30 40 — sheriff
mainly in Holmes is a delta
county 1/3 in hill county — 7%
negro — 6,000 negroes — 4000 whites

Issaquena County - delta
county - negro majority -
smallest county in state.

approximately 1715 no registered
negroes - less than 1/2 of
eligible
complete hands off

Sullivan has a reputation
as a moderate - got a lot
of negroes

in 1960 he was a
presidential elector for against
Kennedy.

Claib.-Jeff. sheriff in run-off in
counties Wilkinson, Marshall

Port
Gibson
near-
Louisiana

~~w~~ strange that all except
Marshall, i.e. Claiborne
got less # votes in run-off
than in original
primary - in 1st
within 30 votes of majority

No contests as yet in race. //

Coahoma County – 2 J
" in 1st primary – Delta
primary & Clarksdale –
Sullivan's home.

Courting Negro votes still
undercover – candidates tried to
get Negro votes
also bargaining on local
level – but no public statement
of support

Winter labeled as being
his black candidate – won
Negro counties – despite wrong
noises

Sunflower city election –
suit for Negro election officials –
Braunstein suit

Conyers to take complaint on his own — he will make report to atty

---

Marshall County — large crowd of whites around polling place — pushed & pulled — telling him to vote for

Hill County — 70% Negro — predominantly

3 Co wide — 3 had run 1st in 1st primary but less than majority

sheriff, clk & sup't of ed

2 supers 1 & 2 districts

---

Southwest C~~o~~ Mississippi

601-948-5400

pres committee

16 un

Natchez

Adams — J.P., Constable

Claib — Chancery Clk

S.W. Miss

Supervisor

J.P.

Constable

Wilkinson — Supervisor

S.W. Miss

Jefferson — J.P.

S.W.

Constable

Supervisor

Delta

Clarksdale — Coahoma Co — 2 J.P.

near Memphis — Marshall — Coroner

Constable

J.P.

In the election

~~I 2~~ 45 independents

primarily Delta

State Sen

Mrs Hamer, State Senator – Sunflower – Presently several seats
Bolivar –
Holmes
Issaquena
Delta counties

20 candidates [illegible]

all large Negro majorities

Mrs Blackwell – J.P.

all getting support of MFDP.
expect lots of economic pressure –

Sunflower County suit –
may [illegible] election – Al has
challenged election – intimi
dation –
Clayton Ct – pending
last

~~Slavis suit~~ -

worst areas

lots of trouble in Delta - expect

new equipment - start

losing jobs rapidly -

many leaving - but

Negro population still growing -

through 71 James

---

Jonathan Shapiro

president's committee

Investigating in Fayette

Jefferson County - Bob Fitzpatrick

General claims

election regs - did not

give proper assistance

or coercive assistance

601
786
85-91
Fitzpatrick

many Negroes did not vote for Negro ~~voters~~ candidate – because they can't accept idea Negro is good.

Claiborne Co – Negro sheriff candidate lost in 2nd primary – yet 290 Negroes registered voters, 1800 white voters –

Negro candidate went down & lost votes in 2nd primary – came within 31 votes of absolute majority

17 – Are such qualifications told to the National Office?

18 – Who in National Office would have responsibility in these matters?

#20 letter to Mrs Rhodes from Dr McDowell

#21 charge to EEOC dated 9/29/66

#22 " " " " 12/6/66

Parham,

#23 - 5/31/66 - application

1963 conviction?

Questions for Co deposition
what were instructions S Car - in assisting
copy of instructions - any correspondence

① Defendant Depositions in Campbell Soup
I

Deakins, esq. } atty
Gwozdz
Partin

Finney & Rachlin

1st Mrs Kingwood

Deft exh #1 for ident
#2 " "

#1 for ident application of Mrs Kingwood for employment - 8/17/66 for

#2 for ident - card of S. Car. Emp. Sec.

#3 - for ident Form 1 - Wonderlic test - Sept 19, 1966

#4 - for ident - charge against Co at EEOC - Jan 10, 1967 (date her handwriting?)

---

Nancy #5 for ident - application at Campbell
#6 " " - petition to EEOC signed by many names - prepared by?
10/4/66

(2) Ethel Burgess

#7 for ident — application at Campbell

Catherine Preston

# 8 for identification — application
# 9 for identification — S Car Emp. Sec

#10 for identification = 2 parts
purports to be original of
charge ~~#~~ to EEOC — signed by
many people

Burgess — Virginia

#11 for ident — application
12 " " post-card from S. Car empl't

Blanding

# 13 for ident application
# 14 " " S Car Emp't Security

Goings — #15 3/1/66 application

Rhodes

# 16 application
# 17 Wonderlic score
# 18 personnel health history record
# 19 pre placement physical

SFOFRE

KINGWOOD, IDELL, D. etal. VS. CAMPBELL SOUP CO, INC. SUMTER, S. CAROLINA 1966-1968
(JOB DISCRIMINATION)

Box 38
Folder 11

State Historical Society Of Wisconsin

Please Retain Original Order

[1967, June 19]

File
Campbell Corp

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

TO MEMBERS OF THE BAR HAVING CIVIL NON-JURY CASES LISTED BELOW:

Gentlemen:

Please take notice that a bar meeting will be held in the United States Courtroom, Columbia, South Carolina, on Wednesday, July 5, 1967, at 10:00 A.M., to fix a roster of civil non-jury cases to be tried during the two-week session of court scheduled to convene on that date. Cases are set for trial in the order in which they appear on the following list. Cases not reached for trial the first week will be carried over in order to the second week.

Briefs are expected to be filed (original and copy) in all cases set for trial in accordance with the Order of the Court dated July 7, 1964, except in the cases in which a formal pre-trial conference has been held and a pre-trial order entered. If anyone does not have a copy of the Order dated July 7, 1964, please call the Clerk's Office for a copy.

If cases are settled, please notify the Clerk's Office.

Very truly yours,

MILLER C. FOSTER, JR.,
Clerk

June 19, 1967.

| C/A | FILED | TITLE | ATTORNEYS |
|---|---|---|---|
| AC-933 | 6-22-62 | Carolina Scenic Stages, Incorporated,<br>vs.<br>The Greyhound Corporation | Fulmer, Barnes Berry & Austin<br>L. Marion Gressette<br>J. Nat Hamrick<br>Thomas A. Wofford<br>Turner, Padget, Graham & Laney<br>Brown, Jefferies & Mazursky<br>Gambrell, Harlin, Russell, Moye and Richardson |

|  |  |  |  |
|---|---|---|---|
| AC-1297 | 11-14-63 | The United States of America<br>v.<br>Southern Railway Company | Terrell L. Glenn<br>John Gregg McMast |
| AC-1662 | 3-25-65 | Roger Haithcock<br>v.<br>United States of America | Henry Hammer<br>Wistar D. Stuckey |
| AC-1687 | 4-16-65 | United States of America<br>v.<br>One 1960 Plymouth 2-door Convertible Automobile, Serial No. 3301102529 | Terrell L. Glenn<br>Kneece & Kneece<br>Alexander M. Sanders, Jr. |
| AC-1697 | 4-29-65 | Raybestos-Manhattan, Inc.<br>Unarco Industries, Inc.<br>v.<br>Atlantic Coast Line RR Co.,<br>Baltimore and Ohio RR Co.,<br>Boston and Main Railroad, et al.<br>v.<br>United States of America and Interstate Commerce Comm. | Rogers, McDonald & Ross<br>John W. Douglas<br>Terrell L. Glenn<br>Robert W. Ginnane<br>Boyd, Bruton, Knowlton & Tate<br>McKay, McKay, Black & Walker<br>J. Edgar McDonald<br>John F. Reilly<br>Colin A. Smith<br>Leonard S. Goodman |
| AC-1818 | 10-11-65 | H. A. Dowey, etc.<br>v.<br>United States of America | Henry Hammer<br>J. Clator Arrants<br>Terrell L. Glenn<br>Charles Porter |
| 66-52 | 1-25-66 | Charles W. Long, etc.<br>v.<br>T. Patrick McGlon, et al | Clarke W. McCants,Jr<br>John Wood<br>William F. Snyder, J |
| 66-92 | 2-4-66 | W. Willard Wirtz, etc.<br>v.<br>John Will Walker, etc. | Charles Donahue<br>Beverley R. Worrell<br>Roger J. Martinson<br>N. Heyward Clarkson, Jr. |

| | | | |
|---|---|---|---|
| 66-102 | 2-9-66 | Stiles M. Harper and his wife, Virginia L. Harper<br>v.<br>United States of America | Boyd, Bruton, Knowlton & Tate<br>Terrell L. Glenn |
| 66-214 | 3-18-66 | Sarah Morgan and American Mutual Fire Insurance Co.<br>v.<br>Liberty Mutual Insurance | J. Reese Daniel<br>F. B. Grier, Jr. |
| 66-239 | 3-24-66 | United States of America<br>v.<br>Jeremiah P. Ballauer | Wistar D. Stuckey<br>John B. Butler, Jr. |
| 66-268 | 4-4-66 | Mrs. Carrie L. Mack, Admx. of the Est. of Jesse Lee Mack, deceased<br>v.<br>David G. McLaughlin | Henry H. Edens<br>J. Edwin Belser, Jr. |
| 66-284 | 4-15-66 | Seaboard Air Line RR<br>v.<br>Coastal Distributing Co., a North Carolina corporation, and Charles David Hill, Jr. | H. Simmons Tate, Jr.<br>J. Means McFadden<br>John R. Etheridge, J |
| 66-345 | 5-9-66 | Elaine V. Case<br>v.<br>Queen City Coast Co., Inc. | Henry H. Edens<br>W. Ray Berry |
| 66-375 | 5-19-66 | Key Sales Co.<br>v.<br>S. C. Electric & Gas Co. | S. Augustus Black<br>Frank B. Gary<br>Charles W. Knowlton |
| 66-426 | 6-7-66 | Edward L. Flowers<br>v.<br>Zayre Corp. | Henry W. Kirkland<br>J. Edwin Belser, Jr. |

|  |  |  |  |
|---|---|---|---|
| 66-449 | 6-14-66 | Eastern Brick & Tile<br>v.<br>United States of America | Henry B. Richardson<br>Wistar D. Stuckey |
| 66-473 | 6-24-66 | Paul T. Silas<br>v.<br>Cecil D. Bowen | Herbert W. Louthian<br>Kale R. Alexander<br>David Fedor |
| 66-489 | 6-29-66 | Ray Thomas Barrett<br>v.<br>Fruehauf Corporation | H. W. C. Furman<br>E. W. Mullins, Jr. |
| 66-515 | 7-15-66 | The National Cash Register Co., a corporation<br>v.<br>United States of America | William H. Gibbes<br>Wistar D. Stuckey |
| 66-546 | 7-27-66 | Donald Alan Koplen, etc.<br>v.<br>Steven M. Solomon, a minor, etc. | Isadore E. Lourie<br>H. Simmons Tate, Jr. |
| 66-547 | 7-27-66 | Eileen Friedman, etc.<br>v.<br>Steven M. Solomon, etc. | SAME AS ABOVE |

(C/A 66-546 & C/A 66-547 are consolidated for trial)

|  |  |  |  |
|---|---|---|---|
| 66-574 | 8-5-66 | Colie C. Jumper<br>v.<br>United States of America | A. Frank Lever, Jr.<br>Wistar D. Stuckey |
| 66-602 | 8-16-66 | Karin G. Blackhurst<br>v.<br>F. D. Rich Company, Inc. | Edgar L. Morris<br>James E. Barfield |

|  |  |  |  |
|---|---|---|---|
| 66-822 | 11-18-66 | United States of America<br>for the use and benefit of<br>Pritchard Products Corp. | W. Croft Jennings, Jr. |
|  |  | v. |  |
|  |  | Fullerton Construction Co.<br>and Continental Casualty Co. | Michael H. Quinn |
| 66-825 | 11-21-66 | United States of America | Wistar D. Stuckey |
|  |  | v. |  |
|  |  | William J. Bundrick,<br>Claudia M. Bundrick, Iva<br>Chloe Bundrick, Lexington<br>County Savings & Loan Assoc.,<br>et al | Robert G. Horine<br>J. Wesley Drawdy |
| 66-835 | 12-9-66 | United States of America for<br>for the use of International<br>Air Conditioning Corp. | Gene V. Pruet |
|  |  | v. |  |
|  |  | Algernon Blair, Inc. and<br>United States Fidelity and<br>Guaranty Co. | Kirkman Finlay, Jr.<br>Edgar L. Morris |
|  |  | vs. |  |
|  |  | Sligh Plumbing and Heating<br>Co. and Continental Casualty<br>Co. |  |
| 67-40 | 1-13-67 | James A. Helton, Jr.,<br>Administrator of the Est.<br>of James Helton, dec'd. | M. M. Weinberg, Jr.<br>John D. Lee, Jr.<br>George D. Levy<br>Shepard K. Nash |
|  |  | v. |  |
|  |  | Mildred Penny and Harold<br>Penny |  |
| 67-64 | 1-24-67 | J. H. Royal | Law, Kirkland, Aaron<br>& Alley |
|  |  | v. |  |
|  |  | Seaboard Air Line RR Co. | H. Simmons Tate, Jr. |
| 67-65 | 1-26-67 | United States of America | Wistar D. Stuckey |
|  |  | v. |  |
|  |  | J. Milo Smiler | (No Appearance) |
| 67-78 | 2-2-67 | United States of America,<br>by Ramsey Clark, Acting<br>Attorney General of the<br>United States | Ramsey Clark<br>John Doard<br>Terrell L. Glenn<br>Frank M. Dunbaugh |
|  |  | v. |  |
|  |  | Calvin Roy Rawl, d/b/a<br>Rawl's Restaurant | Calvin R. Rawl |

|  |  |  |  |
|---|---|---|---|
| 67-114 | 2-15-67 | United States of America, for use of Noland Company | J. Means McFadden |
|  |  | v. |  |
|  |  | Fullerton Construction Co. and Continental Casualty Co. | Michael H. Quinn |
| 67-167 | 3-13-67 | Idell D. Kingwood, Sallie Burgess, Susie Bracey, Silas Walker, Annie Mae Going, et al. | Ernest A. Finney, Jr.<br>Matthew J. Perry<br>Carl Rachlin |
|  |  | v. |  |
|  |  | Campbell Soup Company, Inc. a New Jersey Corporation, and Campbell Soup Company (Sumter Plant), Inc., a South Carolina Corporation | Robert T. Thompson<br>Charles Horsky |

[enclosed, Finney to Rachlin, 1967, July 1]

# IN THE DISTRICT COURT OF THE UNITED STATES
# FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

**RE: CIVIL CASES SET FOR TRIAL IN SPECIAL OR REGULAR TERMS OF COURT IN THE EASTERN DISTRICT OF SOUTH CAROLINA.**

In view of the large number of civil cases pending in the Eastern District, and in view of the fact that several special terms of civil court have been set, and in order to expedite the trial of such cases, all attorneys having civil cases set for trial at any special or regular terms of court are hereby directed to furnish to the Court a trial brief at least five (5) days prior to the opening of the term of court in which such case is set for trial - which said trial brief shall include the following:

1. Name of the attorney or member of the firm handling the case.

2. Are there any Motions not already disposed of?

3. Has all discovery been completed?

4. Give names of witnesses, if any, whose oral depositions have been taken. Have these instruments been filed with the Court?

6. A concise statement of the issues involved in the case.

7. A brief and concise statement of the facts upon which the claim or defense is based.

8. Legal authorities, State and/or Federal statutes, Regulations of State and/or Federal regulatory bodies, foreign laws, conflict of law, questions and conclusions of law upon which the claim or defense is based.

9. Any unusual questions of law concerning admission of evidence or procedure likely to arise in the trial of the case.

10. List of all exhibits intended to be used upon trial of the case.

11. List of names and addresses of all witnesses now known, together with a brief statement as to what you propose to establish by the testimony of each witness.

12. In a negligence case, also furnish the following:

(a) Where permanent injuries are claimed, their nature must be described with particularity and plaintiff's life expectancy. Attach copies of medical reports and doctors' statements where available.

(b) Special damages claimed must be specified in detail, thus in personal injury cases, medical, nursing, hospital and similar expenses should be itemized by giving the names of persons and institutions, and the amount paid to or owing each. If property damage is claimed, the cost of repairs and names of persons making them; or, if incapable of repair, the value of the property immediately before the accident and immediately afterwards.

(c) If loss of earnings is claimed, the amount should be stated, the manner of computation, the period for which loss is claimed, and name of employer.

(d) In death cases, the age, employment, return of earnings, marital status, and life expectancy of deceased; also, the names, ages, and relationship of the dependents, together with the amount of contributions made to them by the deceased for a reasonable period prior to deceased's death.

(e) Plaintiff's counsel should prepare and submit a plat of the scene of the accident to opposing counsel for approval prior to the trial of the case.

13. In a contract case:

(a) If the contract is in writing, a copy should be furnished the Court, and the portions in controversy particularized, with a statement as to the claimed construction thereof, and performance or non-performance thereof, or obligation in connection therewith.

(b) If the contract is oral, its substance should be given; and where there is a dispute of its terms, the controverted items specified and the same features covered as above mentioned as to written contracts.

14. The Court should be advised as to the correctness of identity of legal entities and whether party is correctly designated as partnership, corporation, or individual doing business under a trade name.

15. Have you discussed and explored with opposing counsel the possibility of a compromise settlement?

16. Do you know of any reason why the case cannot be tried at the term for which it is set for trial?

(It is understood that the information required herein is for the sole use of the Court, and it is not expected that copies will be furnished to opposing counsel).

/s/ J. ROBERT MARTIN, JR.
CHIEF JUDGE

/s/ ROBERT W. HEMPHILL

July 7, 1964. /s/ CHARLES E. SIMONS, JR.

UNITED STATES GOVERNMENT
*Memorandum*

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
1776 PEACHTREE STREET, N.W.
ATLANTA, GEORGIA 30309

**TO** : Regional Director

**DATE:** October 17, 1966

**In reply refer to:**

**FROM** : John M. Heneghan and Willie G. Walker

**SUBJECT:** Maebell Williams et al vs Campbell Soup Company
AT 6-9-678 Swanson Food Division
AT 6-10-747-773 Sumter, South Carolina

## FINAL INVESTIGATION REPORT

### I. The Charge

The charging parties allege discrimination on the basis of race (Negro) as follows:

1) Negroes are subject to screening processes that are impossible to pass.

2) Negro applicants are not considered in the same manner as white applicants.

3) Negroes are processed through the South Carolina State Employment Office in Sumter where racial discrimination is standard practice.

### II. Chronology of Events

1) Early 1965 - News of the opening of Campbell Soup Plant is widespread. Plant to open in early 1966.

2) Summer 1965 - Applicants for jobs at State Employment Office in Sumter began requesting referral to Campbell. Notation of such request appears on applicants records.

3) Autumn 1965 - Personnel Manager of new Campbell plant establishes an office in the State Technical Education Center (TEC) and begins appraisal of labor market. FBI investigates the practices of Sumter Employment Office at the request of John Doar.

BUY U.S. SAVINGS BONDS REGULARLY ON THE PAYROLL SAVINGS PLAN

4) Winter 1965 - Potential workers are screened for maintenance jobs and encouraged to take specialized courses at TEC. Basic screening is performed by South Carolina Employment Service. This type of activity will continue into the Spring of 1966. Those completing various courses are "more or less" promised jobs at the Campbell plant.

5) February 1966 - EEOC issues a decision with a finding of reasonable cause against the Sumter Office of the South Carolina Employment Service. Decision is based on investigation conducted in November and December, 1965.

6) Spring of 1966 - Conciliation efforts fail. Law suit is instituted against employment office by charging party. CORE pickets employment office in Sumter. State headquarters of South Carolina Employment Service appoints a Negro to the post of Minority Group Representative. A relationship might exist between all these events but it is not a cause and effect relationship.

7) June 1966 - Campbell Soup begins major hiring program after the postponement of a planned March opening date.

8) July 1966 - Swamped with applicants Campbell introduces the Wonderlic Personnel Test as an additional screening tool. Basic manual and finger dexterity test are given by the State Employment Office. Civil rights groups appraoch company officials with protests over hiring practices. Union organizers appear in the community. A Negro organizer for the Packinghouse Workers sets up shop in the princiapl civil rights office.

9) September 1966 - Civil rights groups encourage the filing of charges against State Employment Office and Campbell Soup Company. Groups unite to send telegram to EEOC regarding Campbell's employment practices.

10) October 4, 1966 - EEOC investigators commence investigation of Campbell and Sumter Employment Office. A petition type charge is developed at CORE meeting.

## III. Background - General

Until recently the city of Sumter was an agricultural center

Background Cont'd

but within the past year more than 2500 industrial employment opportunities arose in the area. The principal new plants were Manning Products Division of Sunbeam Corporation; Electric Storage Battery Inc., and the Swanson Division of Campbell Soup Company. In addition to providing opportunities these plants provided a substantial number of jobs above minimum wage level.

According to the 1960 census Sumter County had a population of 74,941 of which 47% were Negro. Immediately to the south and east of Sumter County are Calhoun, Clarendon and Orangeburg counties with Negroes making up more than 60% of the population. Richland County to the east has a 33% Negro population while Lee County to the north has a 66% Negro population. Despite the number of Negroes the area has remained rigidly segregated and completely dominated by whites.

Recently the city of Sumter added three Negroes to its police force while the Sheriff appointed two Negro deputies to the county force. School integration has been minimal but all white schools have a token number of Negro students. During the course of the investigation the state Attorney General announced that he was filing suit against the Office of Education to prevent the application of guidelines to adjacent Richland County schools.

Sumter boasts a Negro college (Morris) but that institution does not appear to have given any leadership to the Negro community. Several civil rights groups are active in the community. CORE appears to be the most vocal group. This organization is headed up by Reverend Woodrow Lewis. In addition, there is a regional CORE organizer residing in the community. The NAACP has a chapter in the community but this organization has done little in the area of employment. The Community Information Center appears to be closely related to CORE and its head P. J. Rembert has been the notary on all EEOC charges filed in the community.

Unionism was unknown in the community until the arrival of the industrial plants. Organizers from several international unions have been in and out of the community but no formal organizing campaign has begun. As noted above, the Packinghouse Workers have a Negro organizer in town renting space in the same building with CORE and the Community Information Center.

Background Cont'd

As noted in the Chronology the State Employment Office had been charged with a violation of Title VII of the Civil Rights Act of 1964. EEOC found reasonable cause to believe the charge was true (5-8-332 & 5-9-1309). Conciliation efforts did not yield an an agreement so one of the earlier charging parties ( Gussie Michel) entered into suit in the Federal District Court. (Gussie Michel is a current charging party.) There was subsequent picketing of the office in Sumter by CORE. At the same time the South Carolina Employment Security Commission directed its Minority Group Representative to look into the situation. Most of the current charging parties have named the Sumter Employment Office as a respondent in another series of charges related to the Campbell charges.

In the community there is a state supported Technical Educational Center. This is a vocational training institution that is primarily geared to training adult workers in skills needed in the local labor market. To that end, MDTA classes are conducted as well as specialized courses requested by local industry. No complaints were heard about the ability of Negroes to enter upon and complete courses at TEC. In fact, a number of Negroes including many employed by the respondent were trained at TEC.

Background - The Charges:

During the week of September 26 a telegram was received by EEOC in Washington indicating a concern on the part of several civil rights groups about the employment practices at the respondent's Sumter plant. At the same time a charge was forwarded to ATRO from Washington. It was decided to embark upon the investigation immediately.

On October 4 the ATRO investigators arrived in Sumter with the intent of investigating a charge and discussing the telegram with the civil rights leaders. After discussing the Williams charge with Mrs. Williams the investigators found that a group of citizens were on their way to Washington to protest the respondents employment practices. The group was still in a meeting when the investigators arrived. After a discussion with the leaders it was suggested that the most expeditious method of proceeding at the moment was to have all charging parties sign a petition form of the charge. The wording of the petition was developed by the attorney (Sampson) who is currently litigating some earlier charges. As the charging parties filed out the meeting they signed the petition.

There was little individual contact between the charging parties and the investigators but a group discussion was held concerning the charges.

Background Cont'd

Background - The Plant:

The respondent, Campbell Soup Company, is a major multi-plant corporation headquartered in Camden, N. J. This well known company is a Plans for Progress participant and within the jurisdiction of Title VII of the Civil Rights Act of 1964.

The Sumter plant of Campbell Soup Company is primarily a poultry processing facility. It is associated with the Swanson Frozen Foods Division of the company. The end product at this time is the production of chicken TV dinners, bulk cooked and boned poultry for use in making soup at other plants and related products. The plant maintains large freezer facilities for the storage of frozen TV dinners made at other facilities and as such is a principal distribution facility for the company in the southeastern states.

The plant is not now operating at capacity but production is expected to expand as the market for the company's product expands. There are immediate plans to begin production of the aluminum trays for the TV dinners at the facility. These are now produced elsewhere in the company.

The basic raw material of the company is live puultry, principally chickens but turkeys are also used. The chickens are produced locally and the company is in the process of signing contracts with local farmers to produce specific numbers of chickens. This situation was not explored but management was advised that an employer - employee relationship may arise out of these contracts and as such it would be well to extend its EEO efforts into this area.

The production process is relatively simple. Live poultry is hung on moving hangers. As they enter the building the birds are stunned electrically. While constantly moving the birds are killed by the cutting of the throat and are then dressed in a process that takes place in one room. The conveyer continues into another room where the birds are eviscerated and cleaned on an assembly line basis. From there they are passed to a cold storage area for sorting and movement into the next process - cooking and boning for soup, cutting and processing for TV dinners, or processing uncooked for other markets.

The bulk of the jobs require no special skill. At this time local job descriptions had not been prepared, but management has used job descriptions from other plants. Except for the skilled maintenance jobs the skills call only for the ability to read and write and even this ability is not necessary in the ordinary course of work. Manual dexterity and attention to cleanliness are the most important aspects of most jobs.

Background Cont'd

The speed of the production process is maintained by the speed of machinery. The boning operation is a pure hand operation where production standards are maintained but no incentive is paid.

## IV. A. The Facts

The following persons were interviewed:

Mr. G. L. Gardner, Plant Manager, Campbell Soup Company
Mr. Richard V. Gwazdz, Personnel Manager, Campbell Soup Company
Mr. Wayne Partin, Employment Manager, Campbell Soup Company
Miss L. E. Gaston, Manager, Sumter Office SCESC
Mr. Woodrow Lewis, President, CORE
Mr. J. P. Rembert, Director Community Information Center
Miss D. Sampson, Attorney
Mrs. Maebell Williams et al, Charging Parties

The main point in the charges is that the respondent employer is not hiring enough Negroes. There was no suggestion from civil rights leaders or the charging parties that the respondent was discriminating against currently employed Negroes. Before looking at the principal issue in the charges a word will be said about observed internal practices of the company.

The respondent company is a Plans for Progress participant and as such stressed its EEO posture in all discussions through public media about employment prior to any hiring. In fact it was this emphasis on EEO that apparently raised the expectations of Negroes in the community.

At the time of this investigation, the respondent had a work force of 1,011 at the Sumter plant and of this number 176 were Negro. (See Tab E). The Negro workers appeared to be well distributed in the four lower classifications of the EEO-1 and in fact in most areas of the plant. A tour of the facility indicated no signs of segregation or differential treatment. There was an obvious self segregation of workers at the cafeteria tables, but it was not uncommon to see Negroes and whites sitting and eating together.

Since the plant is still in a shake-down phase of operation many of the ordinary personnel functions are not fully operational i.e. transfers, promotions, etc. There appears to be a substantial turnover of personnel but no evaluation has been made of the turnover problem. There was no hint of any racial difficulties in turnover.

Limited attention was given to the sex distribution of the workforce.

Many jobs appear to dominated by one sex and yet sex would not appear to be a bona fide accupational qualification in most instances. Male and female workers personnel records are segregated and each sex is assigned a separate series of clock numbers. The facility does have a number of females operating fork lift trucks - a non traditional occupation for females in this labor market.

B. Recruiting

The main point of the charges is that Negroes are limited in number at the respondents plant. The recruiting process was examined to determine whether the fault lay in that personnel function. An examination of applications on file in the employment office of the plant indicated that approximately 40% of all applicants were Negro. Most applicants came through the State Employment Office but a substantial number of persons made direct application.

Formal recruiting efforts were not necessary at this plant since the attendant publicity about the arrival of a major plant produced a large flow of applicants. The State Employment Office did not act as an impediment to Negro applicants inasmuch as at least 40% of that offices referrals were Negro. Management took pains to solicit Negro leaders to refer applicants and in addition met on at least eight occasions with civil rights leaders. At these meetings the civil rights leaders were requested to refer all potential applicants to the plant particularly since they expressed suspicions about the State Employment Office.

C. Selection

With recruiting discounted as an impediment to Negro employment we then turned to the selection process. Management describes this process as one consisting of five phases:

1. Application evaluation
2. Manual and finger dexterity testing
3. Intelligence testing
4. Reference checking
5. Medical examination

Applications had been received from more than 6,000 persons. The first screening of the applications involved a review of education and work experience. No immediate attention was given to persons with less than eight years of schooling, incomplete applications, erratic work histories, inappropriate work experience or those over fifty years of age. Preference was given to those with industrial work experience. The file of those applications passed over on the basis of the above criteria contains about 1,500 applications. A random sample of the file yielded the fact that there were 110 Negro rejections to 50 white rejections. There was no rigid adherence to all the criteria since the records show that some persons over fifty were hired and a few whites and Negroes were hired in the early period without eight years of schooling.

Most of the rejections were based on either incomplete applications, schooling or age. Schooling was a major factor in Negro rejections and this flows from the nature of the labor market. The following 1960 census data is of importance:

Median years of schooling completed
by those 25 years or older

| Sumter County | Total Population | Non-white Population |
|---|---|---|
| " | 9.3 | 6.2 |
| Calhoun County | 7.7 | 5.6 |
| Clarendon County | 7.1 | 5.1 |
| Lee County | 7.3 | 5.0 |
| Orangeburg County | 8.2 | 5.7 |

By extrapolation we can suggest that two years can be added to the total population figure to estimate the white educational achievement. Thus, the criterion of schooling-even eight years-works to the disadvantage of the Negro in the labor market. This disadvantage is further shown in the statistics of the city of Sumter. In the city itself Negroes make up 35% of the population but of those twenty-five years and older who did not complete eight years of schooling 62% are Negro.

The next major stumbling block to the Negro is the matter of testing. As far as could be observed the finger and manual dexterity tests were not an impediment. These tests were administered by the State Employment Office and were part of the GATB. The records of the state office would indicate that at least 40% of the female referrals were Negro. While qualifying personnel on the GATB series B273 only the M and F factors were counted. Technically the K factor should have been used. This did not appear as an impediment. Of the referrals 105 were rejected by the respondent on the basis of a Wonderlic Personnel Test. Of this number 98 were Negro (including three of the charging parties).

It is not clear why the Wonderlic is used As noted, most jobs require only the ability to read and write. While being told that the test was introduced in July, one month after hiring began, a search of records indicated that

Facts Cont'd

some personnel were tested in the spring. This early testing appeared to be a trial run. The current cutting score is 11 on the Wonderlic. The earlier tests resulted in the hiring of Negro and white personnel with scores of 3 to 6. These are successful employees.

The current cutting score of 11 was arrived at in an unprofessional manner. The respondents personnel concerned with testing have no special training in testing. The only guidance used by those administering the tests is the small booklet accompanying the test. The booklet explains that on a national basis the test achievement of those completing eight years of schooling is 12.3. The respondent arbitrarily substracted one and rounded its cutting score to 11.

Boarderline test results were examined. Of the five-hundred or more records checked there were some questionable scorings. Of the Negro failures at least four should have achieved 11 if properly graded. Of the whites passing, six gave indications that alterations may have occurred on their test paper. The respondent suggested that clerical errors were a more appropriate explanation of the situation. There were no widespread obvious irregularities in the administration or scoring of tests.

Civil rights leaders protested to the company that Negroes were uneasy taking the tests in a mixed group with white supervision. Based on this protest and fulfilling the wishes of the civil rights leaders the respondent is currently testing Negroes separately and using a Negro clerk-typist to proctor and score their Wonderlic tests.

A slight irregularity does occur in the testing program. Normally the respondent uses Form I of the Wonderlic, but on occasion Form V has been used. Form V scores should be reduced by two to equate the test with Form I but this is not done.

It should be noted that the local civil rights agencies have copies of Form I of the Wonderlic and are coaching Negro applicants in the test. The respondent is aware of this situation.

After having passed the barriers described above, applicants must face a physical exam. An examination of medical rejects indicated that there were forty-five white to twenty-four Negro. There is a slight disadvantage to the Negro inasmuch as this rejection ratio is higher than the ratio referred for physicals. Reasons for rejection appeared reasonable but no detailed examination was made of medical records. These records were kept in the medical department and management indicated a reluctance to divulge these records to laymen. As a food handling operation physical exams are administered with great care.

Reference checks are another feature of the screening process. Civil rights leaders suggested that this acted as a stumbling block to many Negroes inasmuch as some employers especially private households and farmers would be reluctant to lose their cheap labor (domestics are paid $3.50 a day). Reference checks are not indicated in writing in anyway. A check of the Negro hires indicated that at least half were domestics prior to coming to Campbell. It was also suggested that a state senator with extensive farm holdings in Pinewood (a local community) prevented Negroes in that community from obtaining jobs at Campbells. Of the Negroes hired several were from Pinewood (total population in 1960 was 2,265).

At this point it should be noted that there is no racial identification on any of the documents examined. The investigators referred to schools as a primary source of racial identification. All domestics were classified as Negro. The basis of this decision is the fact that the State Employment Office has only Negroes in its domestic file and the 1960 census for the city of Sumter shows that 735 of the 776 female household workers were Negro.

There are other tests used that do not affect our charging parties. For office-clerical jobs the Pardue Test of Clerical Adaptability is used. This is basically a knowledge test and one Negro female now working in the plant took this test and failed. There were few if any Negro females in the market seeking clerical positions.

Males are tested differently with many taking the Bennett A A Mechanical Aptitude Test. The purpose of that test was not clear since one maintenance man was hired who scored in the lowest decile. There were no Negro males in the rejection files for test failure.

D. Status of Charging Parties

Maebell Williams - failed Wonderlic - 6th grade education - scored 109/103 on dexterity test.

Lillie Mae Pitts, 44 - fair under consideration - dexterity to be given when called.

Alice Jackson, 42 - no comment - failed dexterity tests.

Facts Cont'd

Annie Mae Goings, 39 - fair - failed dexterity test.

Mary Lue Licen, 35 - poor - not considered - no record of dexterity test.

Virginia Burgess, 32 - fair - under consideration - dexterity score 80/141.

Mrs. Wilber C. Davis, 33 - fair - under consideration - no record of dexterity test.

Ruth D. Wright, 32 - poor - not considered - dexterity score 80/118

Ida M. James - no record.

Phoebe Davis, 51 - poor - not considered age - no dexterity test records.

Gladys Romeo, 27 - fair - under consideration - no dexterity records.

Delores Brailsford, 26 - neat good - under consideration - no dexterity test records.

Catherine Preston, 48 - poor - not considered - 7th grade - passed dexterity test 101/99.

Mary Blonding, 39 - average - 8 on Wonderlic - dexterity score 112/124

Margaret E. Wright, 35 - poor - not considered - passed dexterity 91/94.

Hattie Mae McCoy, 31 - fair - not considered - failed dexterity test.

Hattie G. Preston - no record at Campbell but passed dexterity 98/110.

Mary E. Hicks, 31 - average - under consideration - dexterity score 81/80.

Mary McCants, 38 - good - failed dexterity test.

Evelyn Daney, 49 - very good - failed dexterity test.

Nora Perry - no record.

Ethel Mae Burgess, 38 - fair - under consideration - dexterity 100/118.

Carrie Mae Daney, 49 - poor - not considered but passed dexterity test 121/121.

Facts Cont'd

Susie Bracey, 62 - poor - not considered age and education.

Meta Brunson, no record at Campbell but failed dexterity test.

Silas Walker, Jr. - no record.

James Parham, good in skill - file under consideration (asking $3.00 per hour.)

Gussie L. Mickel - failed Wonderlic - dexterity 89/111. ( Mrs. Mickel is a plaintiff in a suit against the South Carolina Employment Service.)

The above notes on each of the charging parties indicate that each is in a peculiar status. At least nine are among the 2,000 applicants awaiting consideration. This file, of those being considered, would appear to have more than 40% Negro applications. Most applications in this file have been on file since June, and they are randomly picked over when hiring is required. There is no suggestion that our charging parties were given treatment different from the 2,000 others in the file. In commentary (good, fair, poor etc.) noted above is from an interviewers notation. Test failures, age and education account for most of the other charging parties.

The fact that there is no record at the respondent's office of four of the charging parties is not surprising. It must be remembered that the petition charge was developed at the spur of the moment by civil rights leaders in a civil rights meeting when tempers were on edge and a portion of the group was leaving the meeting to drive to Washington to protest their situation. It appeared to the investigators that some of the parties were not sure of what they were signing.

## V. Investigative Conclusions

Given the vast number of applications on file and the substantial number of Negroes hired by the respondent the basic charge that Negroes are not considered for employment cannot be upheld. Nor can we conclude that any of the charging parties were uniquely denied consideration because of their race.

We can conclude that the selection criteria used by the respondent places the Negro at a distinct disadvantage and would tend to screen out Negroes at a disproportionate rate of the total number of applicants.

The first discriminatory requirement is the attainment of eight years of schooling. As noted there is nothing unique in most jobs in the plant that would require any level of education. Prior to July there were a number of hires without eight years of schooling (white and Negro) who have been successful employees. Job descriptions call for the ability to read and write. The use of an eight grade criteria is arbitary inasmuch as schools in the area vary as to quality. Negro schools are inferior to white and rural schools are generally inferior to urban. The eight grade criteria is indicative of time spent in an institution - not of achievement or personal enhancement. The average Negro in the labor market has at least four years less schooling than his white competitor and the majority of Negroes did not complete eight years of schooling.

The second discriminatory selection feature is the use of the Wonderlic Personnel Test. This test is merely a crude measure of intelligence (Tab D Note 1) and the respondent could offer no reason professional or otherwise for using an intelligence test as a selection criteria. It has been suggested by some scholars that intelligence test are worthless predictors of job success in semi-skilled or lower classifications (Tab D Notes 2 and 3.)

In the Sumter labor market the Wonderlic is uniquely onerous to Negroes. As one commentator on Wonderlic has noted:

> "These tests are weakest in two areas, format and content. The print is so small and the items so variable in type and arrangement that uninitiated subjects become confused in taking the test. The items are also strongly academic in flavor since they follow the Otis pattern. These conditions make the test of limited value for individuals in the lowest two deciles of intelligence and for individuals with little schooling. (Tab D Note 4 underlining by investigator.)

Other than the inherent weaknesses in using the Wonderlic, none of the attributes of professionalism are associated with the respondent's use of the Wonderlic. None of the respondent's personnel associated with the administration, scoring or interpreting of test results is professionally qualified for this work. In addition, no effort was made to validate the test in either the work place or the labor market. It would also appear that the booklet used by the respondent as a guide in testing does not meet the criteria set out in Standards for Educational and Psychological Tests and Manuals published by the American Psychological Association.

We can conclude that the respondent's use of the Wonderlic does not meet any of the guidelines published by EEOC on August 24, 1966 nor does it fall within the exemption of Section 703 (h) of the Civil Rights Act of 1964.

We have not dwelt upon the finger and manual dexterity test which up to now have been administered by the State Employment Office. That office is supposed to be using the B-237 series of the GATB which has been validated for poultry laborers. While B-237 consists of three critical cutting scores, Motor Coordination (K)-85; Manual Dexterity (M)-80; and Finger Dexterity (F) - 80; only the "M" and "F" scores are used. As noted above this test did not appear to be a major impediment to EEO. Six of the charging parties failed this dexterity test.

Philip Ash (Tab D Note 2) in his article on testing suggests that significant differences exist between the races on GATB results. He cites a study at Chicago's Cook County Jail for his reference. This investigator worked on that study and cannot completely agree with Ash since extraneous factors entered the study i.e. some Negro inmates in the sample were coming off narcotics and thus their dexterity would be influenced. Be that as it may, the field evaluation of the GATB is that it is not an EEO empediment. Further evaluation of this test instrument by the Research Department of EEOC would be warranted.

## VI. Recommendation

It is recommended that the Commission find reasonable cause to believe that the respondent has violated Section 703 (a) (2) of the Civil Rights Act of 1964 inasmuch as he had adopted selection prodecures, not exempted in Section 703 (h), that tend to deprive individuals of employment opportunities because of such individual's race. This recommendation is based on the presence of a pattern and practice of discrimination rather than unique acts of discrimination against particular individuals.

Recommendation Cont'd

If the Commission upholds this recommendation then the following recommendations concerning the charging parties are warranted:

1. In the charges of Mary Blonding, Maebell Williams and Gussie Mickel find reasonable cause because education and test criteria were discriminatory

2. In the charges of Mary Lue Licen, Ruth D. Wright, Catherine Preston, Margaret E. Wright and Carrie Mae Daney, find reasonable cause because of discriminatory educational requirements

3 . In the charges of Pitts, Jackson, Goings, V. Burgess, Mrs. W. C. Davis, James, P. Davis, Romeo, Brailsford, McCoy, Preston, Hicks, McCants, E. Daney, Perry, E. M. Burgess, Bracy, Brunson, Walker and Parham find no reasonable cause to believe a violation of 703 (a) exists since these charging parties are actively being considered for employment, have not applied at respondent's office or were passed over for valid reasons.

## VII. Postscript

The DOD contract compliance representative reviewed the respondent's facility on October 11 and 12. In addition to a few of our charging parties he met with a group of fifty or more potential charging parties. The problem noted above was reiterated.

The DOD review followed along the lines of the above investigation. The reviewer pressed the respondent on some of the irregularities in test scoring and hiring of people with less than eight years of schooling. In addition he pressed for the cessation of testing immediately. The response from the corporate office was a firm rejection of the suggestion.

The investigator sent a copy of Ash's article on testing to the respondent so that they would have a clear idea of our evaluation of his testing program. It was felt by the DOD reviewer that the testing program may be more critically reviewed by the respondent in coming weeks in the height of the two-prong attack on his testing program.

[1966, December 6].

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506

Maebell Williams, et al
Charging Parties

vs.

Swanson Division of
Campbell Soup Company
Sumter, South Carolina
Respondent

Case Nos. 6-9-7709
6-9-8130 thru 8133
6-10-8545 thru 8569
AT 6-9-678 and
AT 6-10-747 thru 773

Date of alleged violation: August 23, 1966, various other dates, and of a continuing nature
Date of filing: October 4, 1966
Date of service of charge: October 6, 1966

## DECISION

### SUMMARY OF CHARGES

The Charging Parties allege discrimination because of race, as follows: After Negro applicants had qualified for employment by passing a dexterity test (GATB), they have subsequently been systematically excluded by the Respondent through the use of an intelligence test (Wonderlic). Negroes who have been able to pass the intelligence test have sometimes not been employed, and white applicants have been hired either without testing or when they have applied at later dates than qualified Negro applicants. The change in standards for employment works to the disadvantage of Negroes in the community because of low educational attainment. In addition, the Respondent's use of the local state employment service office for initial screening of applicants results in disadvantage due to traditional discriminatory practices by that facility--where Negro applicants may not sit, where they encounter rudeness and offers of domestic work instead of industrial work, and where they suffer delayed referrals or are refused referrals to industrial employment.

SUMMARY OF CHARGES (continued)

Charging Parties and the local CORE chapter (on behalf of Negro citizens) contend that Respondent utilizes certain methods to avoid hiring substantial numbers of Negroes. Furthermore, they allege that the company and the local power structure have agreed to limit the number of Negro women to be hired, to avoid disturbing the domestic work force.

SUMMARY OF INVESTIGATION

1. The Respondent's facility for processing poultry for frozen and canned food products received widespread publicity prior to opening in June 1966. As early as the summer of 1965 applicants at the state employment office requested referrals to the company; screening tests began in the winter of 1965. As of October 6, 1966, Respondent had hired 1,011 persons, including 176 Negroes, classified as follows: 124 unskilled and 19 semiskilled workers, 18 service workers, 8 skilled workers, 5 technicians, and 2 clerical workers. Several hundred job opportunities are expected to materialize and be filled within the next few months as the plant operation achieves full production. The majority of jobs available fall into the category of unskilled work involved in dressing, cooking, and packaging poultry.

2. Investigation disclosed that selection processes used by Respondent have lent themselves to discriminatory practices.

    a. Application Evaluation: Initial screening of more than 6,000 applications eliminated immediately those with less than eight years' school, erratic or inappropriate work histories, over 50 years of age, and incomplete applications; in addition, preference was given those with industrial work experience. All criteria were not rigidly adhered to, in that some past 50 and a few with less than

SUMMARY OF INVESTIGATION (continued)

eight years' school were employed. About 1,500 applications were rejected; nearly three-quarters of these were from Negro applicants, with schooling a major factor. Negroes comprise nearly one-half of the population in the county, and more than half in neighboring counties, but of those over 25 years of age who did not complete eight years of school in Sumter, 62 per cent are Negro. Eight years of schooling is no more valid an indicator of job qualifications than is a pssing score on the intelligence test such as the Wonderlic.

b. Physical Examination: No detailed examination was made of medical records. However, investigation disclosed that there may be a slight disadvantage for Negro applicants because of the large proportion of rejections for medical reasons.

c. Reference Checks: Reference checks, which are not required in writing, are a major stumbling block, and often barrier, to many Negro applicants inasmuch as some employers (especially private households and farmers) are reluctant to lose this source of low-paid labor. Of those Negroes already hired, at least one-half were formerly domestics, paid at the rate of $3.50 per day.

d. Manual Dexterity Testing: At least 40 per cent of the females referred by the state employment office were Negroes who had passed the GATB finger and manual dexterity testing. One technical irregularity in the use of this test was noted, in that one critical score of the GATB B-238 series (validated for poultry laborers) was not being used. Section IV of the Manual for the USES General Aptitude Test Battery, published by the

SUMMARY OF INVESTIGATION (continued)

Department of Labor (1966), sets forth finger dexterity (F) and manual dexterity (M) factors as important aptitudes in the selection of poultry-dressing workers (D.O.T. Code 525.887). An earlier (1962) version of Section III of the Guide to the Use of the GATB also refers to aptitudes F and M. The correlation between these aptitudes and supervisory ratings of current employees was 0.53. This validity coefficient is moderately high and is quite adequate for the prediction of applicants' subsequent performance on the job.

Neither the Dictionary of Occupational Titles (D.O.T.) nor the GATB Manual contain any information to substantiate the notion that general intelligence, verbal ability, numerical ability, or spatial ability are required for the performance of this kind of unskilled work. Since the Wonderlic Personnel Test is heavily loaded with the verbal, numerical, and abstract reasoning components of "general intelligence", its content is irrelevant to job content and employee performance among poultry-dressing workers.

e. Intelligence Testing: One month after hiring began, Respondent introduced the Wonderlic test. A trial with the Wonderlic had been conducted during the spring; Negro and white personnel who failed to achieve qualifying scores in this early testing were hired despite the results and have proved to be satisfactory employees. Respondent personnel who administer the Wonderlic have no training for or experience with testing; they use for guidance a small booklet accompanying the test. They have arbitrarily subtracted more than one point from the score designated by publishers of the test as the national norm for persons completing eight years of school. A certain number of irregularities in test administration and scoring were noted,

SUMMARY OF INVESTIGATION (continued)

in that a number of records revealed questionable scoring and improper grading, as well as alterations on test papers. Respondent contends these were clerical errors.

3. Seldom will there be independent evidence that Respondent intended its educational and testing requirements to eliminate a disproportionate number of Negro job applicants, but it is elementary that a person must be held to intend the normal and forseeable consequences of his actions. If Respondent did not anticipate the results of its screening procedures, it is certainly aware of them now. This is not to suggest that in all circumstances it is improper for an employer to utilize selection devices which may incidentally reject a disproportionate number of Negro applicants, but where, as here, the educational and testing criteria have the effect of discriminating and are not related to job performance, there is reasonable cause to believe that Respondent, by utilizing such devices, thereby violates Title VII.

4. Nine of the 30 Charging Parties are included among 2,000 applicants awaiting consideration since June 1966; when hiring is done, the Respondent states that applications are selected from the file in a "random" fashion and with no attempt to hire in the sequence in which people had applied. This does not explain why only 17 per cent of the current employees are Negro, whereas 40 per cent of the applicants referred by the Employment Security Commission as being qualified are Negro. Negroes account for nearly one-half the population in the county where the plant is located, and more than 60 per cent in counties to the South and East and 66 per cent in the county to the North. Despite this, a pattern of rigid segregation persists in the area.

SUMMARY OF INVESTIGATION (continued)

5. The majority of the jobs to be filled require no special skills. Those classified as skilled maintenance jobs do require that the applicant read and write. The Respondent is using job descriptions developed for operations in similar plants at other locations until such can be written for this facility.

6. Inspection of the plant revealed that Negro employees were not segregated within working areas, and there were no signs of differential treatment with respect to any plant facilities. Some jobs appear to be dominated by one sex, but this does not appear to result from any claim for a bona fide occupational qualification. Female employees were observed to operate forklift trucks, a non-traditional assignment. However, male and female employees are assigned separate series of clock numbers, and personnel records are segregated by sex.

DECISION

Reasonable cause exists to believe the Respondent has violated Sections 703 (a)(1) and (2) of the Civil Rights Act of 1964, as follows:

1. It has failed to hire Charging Parties and others similarly situated, because of race, by arbitrarily and discriminatorily setting educational standards that are not justified for the jobs sought, as a means of restricting the number of its Negro employees; and

2. It has limited the selection of its employees in a way that tends to deprive the Charging Parties and others of employment opportunities, because of race, by the discriminatory use of testing procedures which are not exempted by Section 703(h).

For the Commission:

Dec 6, 1966
Date

Marie D. Wilson
Marie D. Wilson
Secretary

*LAW OFFICES*
*FINNEY AND GRAY*
*16½ WEST LIBERTY STREET*
*SUMTER, S. C. 29151*

*ERNEST A. FINNEY, JR.*
*RUBEN L. GRAY*

*P. O. BOX* 836
803 *TELE.* 775-1737

December 19, 1966

Attorney Carl Rachlin
Scholarship, Education, and
Defense Fund
150 Nassau Street
New York, New York

Re: Swanson Division,
Campbell Soup Company
Sumter, South Carolina

Dear Carl:

Please find enclosed the Decision of EEOC based on the thirty-five complaints which were filed against the above-referenced company. Please read and call me. We want to go into Federal Court immediately.

Yours very truly,

Ernest A. Finney, Jr.

EAF Jr:dmm

Enclosure

December 21, 1966

Ernest Finney, Esq.
Finney & Gray
16 1/2 West Liberty St.
Sumter, South Carolina 29151

RE: Swanson Division,
Campbell Soup Co.
Sumter, S. Carolina

Dear Ernest:

This is to confirm our telephone conversation this morning. Of course, SEDF wants you to represent the persons involved in the acts of discrimination as more fully described in the decision dated the 6th of December, 1966 by the Equal Employment Opportunity Commission. As we discussed, it shall be necessary to obtain a lot of factual information to fill out the probable cause of violation under Title VII. Every plaintiff who will be involved will have to spell out for you, in detail, precisely his qualifications for the job.

We will also have to have expert testimony on some of the matters referred to in the EEOC papers. It will be necessary to show that for the jobs to which people applied, these qualification tests were irrelevant and were designed to exclude Negroes and, by every reasonable expectation, they would exclude Negroes. This shall require experts who will be able to discuss what are relevant qualifications for these jobs and why a test like the Wonderlic test is culturally designed to exclude Negroes or that the employer used the test with the realization that it would exclude Negroes.

Of course we shall have to take depositions of the Company on all of these points and, in addition, as to the persons hired, what their qualifications were, etc. When you receive a copy of the investigation report from EEOC, I hope you will be able to give me, if not a copy of it, then a summary of it. I look forward to seeing you soon.

Sincerely,

Carl Rachlin
General Counsel

CR:gtc

LAW OFFICES
FINNEY AND GRAY
16½ WEST LIBERTY STREET
SUMTER, S. C. 29151

ERNEST A. FINNEY, JR.
RUBEN L. GRAY

P. O. BOX 836
TELE. 775-1737

January 16, 1967

Attorney Carl Rachlin
Legal Department
Scholarship, Education and Defense
Fund For Racial Equality
150 Nassau Street
New York, New York 10036

Re: Campbell Soup Co.
Swanson Division
Sumter, S. C.

Dear Carl:

Enclosed you will please find a copy of my letter to the Equal Employment Opportunity Commission requesting that they immediately forward me the thirty-day notice letters. In view of the time element, I am going to suggest that we confer February 4 and 5 on this matter. Please advise me of your thinking concerning, and if possible mark your calendar and I will come to New York for that weekend.

In addition, I wish that you would kindly contact Andy Norman and see if he will be available for me to talk with him on that weekend.

Yours very truly,

Ernest A. Finney, Jr.
m

Ernest A. Finney, Jr.

EAF Jr:dmm

Enclosure

COPY

January 16, 1967

Mr. Donald L. Hollowell
Atlanta Regional Office
Equal Employment Opportunity Commission
1776 Peachtree Street, N. W.
Atlanta, Georgia 30309

Re: Campbell Soup Co.
Swanson Division
Sumter, S. C.

Dear Mr. Hollowell:

In accordance with our letters to you of December 16, 1966, and January 9, 1967, we hereby request that you forward us the thirty-day notice letters on behalf of those parties who are complainants in the above-entitled matter. You will recall that in our letter of January 9, we enclosed copies of our retainer agreements with these parties.

We would also be appreciative if you would send us copies of the investigation reports, along with any other material you may have available, which would expedite the handling of this matter.

Thank you very much for your consideration and cooperation in this matter.

Yours very truly,

Ernest A. Finney, Jr.

EAF Jr:dmm

January 20, 1967

Ernest Finney, Esq
Finney & Gray, Esqs.
16 1/2 West Liberty Street
Sumpter, South Carolina 29151

Re:Campbell Soup Company - Swanson Division

Dear Ernest:

Thank you for your letter of the 16th, the weekend of February 4th and 5th is bad for me because I have scheduled a conference in Washington that weekend which I am afraid cannot at this time cancel since it involves a lot of people.

So far as Andy Norman is concerned he will be away for the next two weeks and so I cannot be certain what his calendar is.

However, if there is anything you wish us to do, with regard to Swanson Division, or anything else for that matter,please let me know. For example as I mentioned to you, we are actively at work trying to prepare for you as counsel with regard to the question of the voters reregistration 1967. I hope that you and I can begin a serious and well planned attack on the reregistration legislation.

Please keep in close touch and I will advise you as soon as I have some information. Warm personal regards

Sincerely,

Carl Rachlin
General Counsel

CR:n

*LAW OFFICES*
*FINNEY AND GRAY*
*16½ WEST LIBERTY STREET*
*SUMTER, S. C. 29151*

*ERNEST A. FINNEY, JR.*
*RUBEN L. GRAY*

*P. O. BOX 836*
*TELE. 775-1737*

Excerpts from Wunderlich Test
Standard Psychological Test

February 7, 1967

Attorney Carl Rachlin
Legal Department
Scholarship, Education and Defense
Fund For Racial Equality
150 Nassau Street
New York, New York 10036

Re: Campbell Soup Co.
Swanson Division
Sumter, S. C.

Dear Carl:

I am now ready to proceed to file the complaint against Campbell Soup Company. Please send me any suggestions you may have as to form and/or content in connection with this. I propose getting the following persons and/or papers:

1. "The Civil Rights Movement and Employment." Industrial Relations (May, 1964).
2. Philip Ash, "The Implications of the Civil Rights Act of 1964 for Psychological Assessment in Industry," presented in the symposium, Legal Issues Which Confront the Psychologist and the Community, at the convention of the American Psychological Association in Chicago, September 5, 1965.
3. "The Motorola Case," Industrial Psychologist, II, August, 1965.
4. Robert M. Guion, "Employment Tests and Discriminatory Hiring," Industrial Relations, Vol. 5, No. 2, February, 1966.
5. Also any additional articles concerning this issue, particularly later articles.

Brooklyn College

I propose contacting and explaining the possibility of calling as expert witnesses at least the following persons on the testing issue:

1. Robert M. Guion, Professor of Psychology
   Bowling Green University
   Bowling Green, Ohio
2. Dr. Philip Ash, Inland Steel Company
3. Dr. K. U. Smith, Director
   Behavior Cybernetics Laboratory
   University of Wisconsin
4. Dr. Edwin E. Ghiselli
   University of California
5. Dr. Kenneth Clark
   City University of New York
   New York, New York
6. Someone from testing agency

As you can see, this is a very involved proceeding. Please let me have your comments immediately.

Yours very truly,

Ernest Finney Jr

Ernest A. Finney, Jr.

EAF Jr:dmm

Feburary 9, 1967

The Sumter Study Committee met 7:30 P.M. at the Community Information Center, Inc. 308 Manning, Avenue with Rev. [illegible] Smith presiding.

The reason for the meeting was given by J. Philip Rembert and Mr. J. T. McCain in response to Rev. R.S. Johnson.

Some of the things the Negro want in Sumter was expressed by Mr. Frank Robinson and others.

1. Extension of the City Limit in the Southern Section
2. Streets and Sidewalks
3. Truck Drivers for the City
4. Meter readers fro the City
5. People in the Court House
6. People in City Hall
7. Taxis at the train and Bus stations.

Rev. Taylor give a dramatic example of the Negro Taxi Drivers.

It was the common concent of the Study Committee, that Negroes Serving on any Committee should report to the people what is going on in their meetings.

It was moved by Rev. Johnson and 2nd by Mr. Glover that the Election on Saturday be our first order of business. The motion was carried. ( The election was for members of thepoverty Board for Sumter and the County)

It was suggested by Att. Finney that each of the following Organizations select a member as a propose candidate for the Board. Labor, NAACP, COMmunity Information Center, Inc., Sumter Civic League, Ministerial Alliance, and CORE. It was moved by Mr. Glover and 2nd by Rev. Taylor that the suggestion by Att. Finney be carried out. The motion was carried. It was further suggested by Att. Finney, that the head of each organization, or a representative of that organization be present with his nominee at the meeting Tuesday Night February 14, 1967 at the YWCA on S. Washingtoon St. At was suggested by Rev. Martin that the nominee of each organization represent the people at large. It was moved by Rev. Taylor and 2nd by Rev . Martin that the election of the members to the CAP Board be our project through the 18th of February. The motion was carried.

February 23, 1967 7:30 P.M. was set for our next meeting at the Community Information Center, Inc.

As Recorded by

J. Philip Rembert

**Legal Defense Fund**
NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
10 Columbus Circle, New York, N.Y. 10019 • JUdson 6-8397

February 17, 1967

Carl Rachlin, Esq.
150 Nassau
New York, N.Y. 10038

Dear Mr. Rachlin:

Here are the complaints I promised you in our telephone conversation of today. The Harvey complaint is a straightforward hiring situation. The Griggs complaint raises the testing issue that you are particularly interested in. I hope that they will be of some help to you. Let me know if there is anything else I can do.

Sincerely yours,

Gabrielle A. Kirk

Gabrielle A. Kirk

GAK:cf

Enclosures

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506

March 7, 1967

IN REPLY REFER TO:

Mr. Carl Rachlin
General Counsel
Scholarship, Education and
Defense Fund for Racial Equality
150 Nassau Street
New York, New York 10038

Dear Mr. Rachlin:

E. F. Wonderlic and Associates, Inc. offer a Six Form Sampler containing a set of 60 forms (10 each of Forms A, B, I, II, IV, V and EM) with Score Key, Manual of Instructions and Special Reports. It costs $10.00 and may be ordered from Wonderlic at Post Office Box 7, Northfield, Illinois.

Sample sets of two forms and reports concerning the use, experience and other studies of Wonderlic tests can be purchased for $5.00.

Hope to see you soon.

Sincerely yours,

John Dalessio

John G. Dalessio

COPY

March 16, 1967

Mr. Russell Spector
Senior Attorney
Office Of The General Counsel
Equal Employment Opportunity Commission
1800 G Street, N. W.
Washington, D. C.

Dear Mr. Spector:

Re: Campbell Soup Company
(Sumter Plant), Inc.

We are enclosing herein a copy of the Complaint, which was recently filed against the above-named defendant subsidiary and its parent corporation, alleging violations of Title VII of the Civil Rights Act of 1964.

Because of the interest generated by this matter and because of the widespread effect which the decision on this might or might not have on the implementation of Title VII, we are sending you this letter in the hope that after you have had an opportunity to go over the Complaint, your staff may be disposed to refer this matter to the Justice Department for its consideration.

If there are any questions which you have, please feel free to contact this office or any of the counsel listed on the Pleadings.

Yours very truly,

Ernest A. Finney, Jr.
Ernest A. Finney, Jr.

EAF Jr:dmm

Enclosures

cc: Attorney Matthew J. Perry
Attorney Carl Rachlin

*LAW OFFICES*
*FINNEY AND GRAY*
*16½ WEST LIBERTY STREET*
*SUMTER, S. C. 29151*

*ERNEST A. FINNEY, JR.*
*RUBEN L. GRAY*

*P. O. BOX 836*
*TELE. 775-1737*

March 17, 1967

Mr. Carl Rachlin
Scholarship, Education And Defense Fund
150 Nassau Street
New York, New York

Dear Mr. Rachlin:

Re: Campbell Soup Company
(Sumter Plant), Inc.

The following is the bill of this office in the above-entitled matter up through March 13, 1967.

| | | |
|---|---|---|
| 1. | Three days in conferences with clients @ $75.00 per day .................... | $225.00 |
| 2. | Two days in Atlanta, Georgia, going over files with EEOC @ $75.00 per day | 150.00 |
| 3. | Two days in Washington for conferences with OFCC and EEOC @ $75.00 per day | 150.00 |
| 4. | One day in New York, conference with Atty. Carl Rachlin ................. | 75.00 |
| 5. | Two days in preparation of pleadings | 150.00 |

Items Of Expense

| | | |
|---|---|---|
| 6. | Two trips to Atlanta, Georgia, at $36.00 each ........................ | 72.00 |
| 7. | One trip to Washington, D. C. ...... | 68.00 |
| 8. | One trip to New York .............. | 104.84 |
| 9. | Four trips to Columbia, S. C. 480 mi. at 10¢ per mi. ..................... | 48.00 |
| 10. | Recording Fee ..................... | 15.00 |
| 11. | Cost of making additional copies ... | 19.60 |

| | |
|---|---|
| Total .................................. | $1,077.44 |
| Less: | |
| Paid on Account .............. | $250.00 |
| Balance Due .............................. | $ 827.44 |

We would appreciate very much your sending us this amount as soon as possible.

Yours very truly,

Ernest A. Finney, Jr.

Ernest A. Finney, Jr.

EAF JR:dmm

cc: Mr. Marvin Rich
Leadership Development Director

Campbell soup

March 28, 1967

COPY

Mr. Alfred W. Blumrosen
Chief of Conciliations
Equal Employment Opportunity Commission
1800 G. Street, N.W.
Washington, D. C.

Re: Case Nos. 6-9-8130 et al.
Campbell Soup Company
Sumter, South Carolina 29150

Dear Mr. Blumrosen:

We appreciate very much your letter of March 21, 1967, advising that the services of the Commission were still available.

It is correct that we have instituted proceedings in this matter; and of course, as we have indicated since the very inception of this controversy, we are willing to meet with any responsible person at any place at any time to discuss conciliation. You will recall that we have always been available for discussion.

We are enclosing a copy of all the pleadings except the Decision, which we believe you already have on file.

Thank you very much for your consideration and cooperation in this matter.

Yours very truly,

Ernest A. Finney, Jr.

Ernest A. Finney, Jr.

EAF Jr:dmm

Enclosure

cc: Atty. Matthew J. Perry

Atty. Carl Rachlin

March 30, 1967

Dr. Frank Riessman
New York University
100 Washington Square East
New York, New York 10003

Dear Dr. Riessman:

Enclosed is the Wonderlic test material. Your comments will be valuable since this will be used in our Campbell Soup case.

Cordially,

Carl Rachlin
General Counsel

CR:n
Enclosure

*a private*
*organization in the*
*nation's capital*

**THE BUREAU OF NATIONAL AFFAIRS, INC.**

*1231 24th Street, Northwest, Washington 7, D. C. • Telephone FEderal 3-6800*

April 6, 1967

Mr. Carl Rachlin
General Counsel, CORE
150 Nassau Street
New York, New York

Dear Mr. Rachlin:

Recently we were informed about the decision of Equal Employment Opportunity Commission of December 6, 1966. This decision was that reasonable cause existed to believe that Title VII of the Civil Rights Act of 1964 had been violated by a food processing plant in administering a discriminatory intelligence test.

Since we publish material on Fair Employment Practices, we would like to obtain a copy of this decision. Could you possibly help us do so?

Thank you for your consideration.

Sincerely,

Barbara Slobodian

(Mrs.) Barbara Slobodian
Staff Editor
Labor Relations Reporter

BS/sc

Steve
In Campbell Soup
file please take out
decision of EEOC & make
Xerox copy & send to

*The facts you need—when you need them*

April 13, 1967

Mrs. Barbara Slobodian
Staff Editor
Labor Relations Reporter
1231 24th Street, Northwest
Washington 7, D. C.

Dear Mrs. Slobodian :

We have enclosed a zerox copy of the Equal Employment Opportunity Commission decision of December 6, 1966 as you requested in your letter of April 6, 1967. If there is any other way in which we can be of assistance, we should be pleased to do anything we can.

Sincerely,

Carl Rachlin
General Counsel

CR/AS

OFFICE OF THE CLERK
**UNITED STATES DISTRICT COURT**
DISTRICT OF SOUTH CAROLINA
**COLUMBIA 29202**

P. O. BOX 1478

PLEASE REFER TO

File
Campbell
Soup

April 14, 1967

Ernest A. Finney, Jr., Esq.
Attorney at Law
16½ West Liberty St.
Sumter, South Carolina

Matthew J. Perry, Esq.
Attorney at Law
1107½ Washington St.
Columbia, S. C.

Carl Rachlin, Esq.
Attorney at Law
150 Nassau St.
New York, New York

Robert T. Thompson, Esq.
Attorney at Law
The Daniel Building
Greenville, S. C.

Messrs. Covington & Burling
Attorneys at Law
701 Union Trust Building
Washington, D. C.

Re: Idell D. Kingwood, et al
-vs- Campbell Soup Company, Inc., etc., et al
Civil Action No. 67-167

Gentlemen:

Enclosed to each of you is a certified copy of Judge Hemphill's Order filed April 13, 1967, extending time for plaintiff's to serve and file objections to defendant's interrogatories to May 1, 1967, and further extending time for plaintiffs to serve and file answers to defendant's interrogatories to May 12, 1967.

Very truly yours,

MILLER C. FOSTER, JR., CLERK

Ann Birch

By: Ann Birch, Deputy

Encl.

File in Campbell Supp

JOHN H. WHEELER, PRESIDENT
JOSEPHINE WILKINS, VICE-PRESIDENT
RUFUS E. CLEMENT, VICE-PRESIDENT
PAUL R. CHRISTOPHER, VICE-PRESIDENT
THOMAS W. YOUNG, VICE-PRESIDENT
RAYMOND M. WHEELER, CHAIRMAN, EXECUTIVE COMMITTEE
JOSEPH HAAS, COUNSEL
PAUL ANTHONY, EXECUTIVE DIRECTOR

Southern Regional Council, Inc.
5 FORSYTH STREET, N. W.
ATLANTA, GEORGIA 30303
522-8764

A Council to attain the ideals and practices of equal opportunity for all peoples in the South

April 26,1967

Mr. Carl Rachlin
General Counsel
Scholarship, Education and
Defense Fund
150 Nassau St.
New York, New York 10038

Dear Carl:

Thanks for your response to my inquiry regarding cases filed by you under Title VII. The information will be most helpful. I take it that none of the cases have been settled either by conciliation or by a court order.

I may come back at you later for more information, but am grateful for your attention to my request.

Sincerely,

Emory

Emory F. Via, Director
Labor Program

EFV/jd

Sight Cy in Nurse's Aids in NY
perhased to master 6-12 grade achievement
608-262-1234

Campbell

THE UNIVERSITY OF WISCONSIN
MADISON 53706

DEPARTMENT OF PSYCHOLOGY
PSYCHOLOGY BUILDING
CHARTER AT JOHNSON

April 26, 1967

Mr. Carl Rachlin
150 Nassau Street
New York, New York

Dear Mr. Rachlin:

I am sending you enclosed a general evaluation of use of psychological tests. The most general charge against personnel tests, such as the Wonderlic, is that the organizations selling tests have been working a discriminatory racket over the past four decades to structure personnel operations of evaluating employee performance so that these evaluations conform to test operations. The evidence for this statement is that objective evidence indicates the tests have no predictive significance and that any such demonstrated significance arises from the way that performance evaluations surreptitiously have been made to conform to test results.

The following points may be made about the discriminative use of the Wonderlic Test or any other verbal test of employment:

1. If the test has not been specifically validated (checked and cross-checked for correlation with specified criteria of performance) on the jobs to which it is applied by the company concerned it is being misused as an unwarranted discriminatory device.

2. If the test is being used in general in individual assignment or prediction it is being misused whether the company has validated it or not. No test in existence has a predictive validity that warrants it being used for individual forecasting.

3. If the company has not posted required test standard and test cutting scores for specific jobs based on its own research and on defined and measured criteria within its own plants, it can be charged with violating industrial requirements in using tests set up by the Equal Opportunities Commission.

Specifically, the following points can be made about the Wonderlic and all of its forms:

1. The test is not recommended by Buros" Mental Measurement

Yearbook and is described by that book as not fulfilling minimal requirements of objectivity in setting up tests for employment.

2. The company selling this test is not a scientifically oriented organization and its tests are considered to be hack work.

3. Research has shown that the tests have no validity in prediction of job performance for which the tests are intended (See Tiffin and McCormick: Prentice Hall).

4. The standards and norms of the tests are based on guesswork and not on scientific investigation and analysis.

5. These tests are patently discriminative against individuals not specifically trained in the types of test items contained in the tests. These tests are considered to be intellectual aptitude tests; however, the performances on them are greatly influenced by past learning.

6. The scoring norms and score standards used with the Wonderlic are based on measurement of predominantly white populations already employed in industry and do not encompass negro performance on the same tests.

7. The tests overemphasize verbal and numerical factors in which the negro has been systematically disadvantaged in past education, employment and home training.

8. The Wonderlic is not a fair test because it is not a scientifically controlled test. Its author is not a scientist, but a financial operator. The test is not sold with safeguards to prevent cheating on it by learning the questions in prior exposure. Among scientists, it is considered one of the worst examples of test charlatanism on the market.

9. Since the test is not scientifically founded, contains built-in discriminatory factors related to educationally disadvantaged individuals, and is sold and used in a careless way calculated to preclude exact scientific comparisons, it is almost certain that its use by industrial operators is intended to favor the use of non-standardized unfair judgment--i.e., discriminatory judgment.

Sincerely,

Karl U Smith

KUS:mm

Karl U. Smith
Professor

C
O
P
Y

May 3, 1967

Mr. Marvin Rich
Scholarship, Education, Defense Fund
150 Nassau Street
New York, New York 10038

Re: Kingwood, et al. v.
Campbell Soup Co., et al.

Dear Mr. Rich:

This will acknowledge receipt of your letter and your check in the amount of $827.44; thank you very much. You will note that this leaves a balance due through April 15, 1967, on this account of $131.00. We will include this amount in the bill which we will send you on May 15.

Again, thank you very much for this much-needed assistance.

Yours very truly,

Ernest

Ernest A. Finney, Jr.

EAF Jr:dmm

cc: Mr. Carl Rachlin

File
Campbell Soup

Two Wall Street
New York, New York

May 5, 1967

Ernest A. Finney, Jr., Esq.
Finney and Gray
16 1/2 West Liberty Street
Sumter, South Carolina 20151

Re: Campbell Soup Company

Dear Mr. Finney:

I enclose herewith an article from The New York Times of May 4, 1967 which follows up the clipping which I recently sent you concerning the suit against Philip Morris. Apparently the main thrust of that suit is different from ours insofar as it concerns seniority.

Incidently, there is an interesting Note on Title VII with regard to seniority discrimination in the April, 1967 Harvard Law Review (80 Harv. L. Rev. 1260).

Very truly yours,

SAH

Stephen A. Hopkins

Enclosure

cc: Carl Rachlin, Esq.
150 Nassau Street
New York, New York

**S**CHOLARSHIP,
**E**DUCATION AND
**D**EFENSE
**F**UND FOR
RACIAL EQUALITY inc.
150 NASSAU STREET
NEW YORK, N.Y. 10038
TELEPHONE 964-8210

Just file
in Campbell Soup

I sent the Xerox
& kept this

May 15, 1967

Campbell Soup

Dear Ernest

Enclosed is a copy of Prof R. G. Smith's report of April 26. He will be here Monday, A.M. for the meeting with Campbell. His initial reaction is that the new test is also no-good

Regards
Carl

*Contributions are deductible for income tax purposes*

■ *president;* Andrew E. Norman ■ *vice presidents;* William S. Ellis, Nannette Sachs ■ *secretary;* Ezra Levin ■ *treasurer;* Shelley Appleton ■ *executive director;* Marvin Rich ■ *leadership development director;* Ronnie M. Moore ■ *legal director;* Carl Rachlin ■ *BOARD OF DIRECTORS;* Nils R. Douglas, Chairman ■ John P. Allison ■ Robert Ausnit ■ James Baldwin ■ Katrina McCormick Barnes ■ Canon James P. Breeden ■ Dr. Kenneth B. Clark ■ Robert Curvin ■ Charlotte Devree ■ Robert F. Drinan, S. J. ■ John Henry Faulk ■ Michael O. Finkelstein ■ Doris Freedman ■ Dr. Edward L. Gibson ■ James T. Harris ■ Claude Heckscher ■ Norman Hill ■ Clarence B. Jones ■ Dr. Archie Lacey ■ Joann List Levinson ■ Henry Morgenthau, III ■ Dr. William Stuart Nelson ■ Richard J. Schwartz ■ Elaine Slater ■ Norman Thomas ■ Rowland Watts ■ Pearl L. Willen

May 26, 1967

Dr. Karl U. Smith
Department of Psychology
The University of Wisconsin
Psychology Building
Charter at Johnson
Madison, Wisconsin

Dear Dr. Smith:

Thanks so much for coming from Wisconsin the other day. Your presence was very useful to us; without it I believe the Company would have gotten away with a great deal.

Enclosed is our check for $109.25 covering your expenses.

Thanks loads.

Sincerely yours,

Marvin Rich
Executive Director

MR/lp
Enclosure:
c.c. Mr. Carl Rachlin
Mr. Ernest Finney

*LAW OFFICES*
*FINNEY AND GRAY*
*16½ WEST LIBERTY STREET*
*SUMTER, S. C. 29151*

*ERNEST A. FINNEY, JR.*
*RUBEN L. GRAY*

*P. O. BOX 836*
*TELE. 775-1737*

June 12, 1967

Mr. Carl Rachlin
Legal Director
Scholarship, Education And
Defense Fund
150 Nassau Street
New York, New York 10038

Re: Kingwood v. Campbell Soup Co.

Dear Carl:

This will advise that the Campbell Soup Company case has taken a turn for the worst. Since our last meeting in New York, Campbell Soup Company has taken a position that indicates they want us to dismiss this lawsuit based upon their verbal assurances that they will work towards elimination of the matters which were discussed in our New York conference. The implication being that because of certain things which were said in New York, the matter can no longer be settled.

It has, therefore, become my responsibility to answer the interrogatories which were filed. This meant that more than seventy legal pages of typewritten material had to be sent in to the Court on yesterday. This also means that we now have until the end of this week to submit to the Court our interrogatories to the defendants. As you are probably well aware, I have not received any concrete proposals for the interrogatories or the answers to the interrogatories, and I am doing the best I can by my damn self.

In conjunction with this I am enclosing two letters; one from Mr. Harwick and one from Mr. Hollowell, which I believe are self-explanatory.

As you are also probably well aware, the expenses have been increasing tremendously. I am enclosing herein a statement of expenses to date, which I hope you will be able to do something about immediately.

Yours very truly,

Ernest A. Finney, Jr.

cc: Mr. Marvin Rich

EAF Jr:dmm

Enclosures

[enclosed, Finney to Rochlin, 1967, June 12]

June 5, 1967

Mr. William B. Harwick
Vice-President, Personnel
Campbell Soup Company
Camden, New Jersey 08101

Dear Mr. Harwick:

Your letter of May 31, 1967 in which you reacted to the summary of the conciliation conference in New York City on May 22, 1967 has been referred to me.

I regret that you did not find this summary acceptable. I state to you quite candidly, however, that the resume was reviewed by me and the members of our conciliation team prior to being forwarded to you and since receiving your letter. The consensus is that it reasonably and accurately reflects that which we understood took place. Since, however, your letter indicates some difference of opinion, I cordially invite you to send immediately to us a statement of your contentions. We would then make a comparison and effect any adjustments which are deemed appropriate.

The statement in the resume indicating that Campbell Soup Company had "agreed" to the nine critical points in the proposal was intended to connote agreeableness from the standpoint of the discussion at the time. We all know, of course, that no conclusive determinations have yet been made.

An early receipt of your contentions will be greatly appreciated. At the same time, I respectfully invite your attention to the fact that there are some time limitations placed by the Court upon our conciliation efforts. Also, I believe it was the expressed intent that there be an early follow-up meeting, perhaps in South Carolina. As soon as we have resolved any real differences of concepts, we can schedule this conference looking toward concluding this matter.

Sincerely yours,

Donald L. Hollowell
Regional Director

CAMPBELL SOUP COMPANY
Camden, New Jersey 08101

William E. Harwick
Vice President - Personnel

[Enclosed, Finney to Rachlin, 1967, June 12]

June 7, 1967

Mr. Donald L. Hollowell
Regional Director
Atlanta Regional Office
Equal Employment Opportunity Commission
1776 Peachtree Street, N. W.
Atlanta, Georgia 30309

Dear Mr. Hollowell:

Thank you for your letter of June fifth.

Please let me expend on the comments in my previous letter concerning why Mr. Calder and I were disappointed with the results of the New York meeting.

We felt, because of the impending lawsuit against the Company, that the discussions in New York would be off the record and exploratory to see whether there could be some accommodation of the viewpoints of all parties. We felt that while there was a friendly exchange the difficult problems separating the parties were sidestepped. We felt that Mr. Rachlin injected some difficult problems which had not existed before.

Nevertheless, for your information, we did meet with Mr. Finney in South Carolina and, I am sorry to report, there has been no solution to this problem. As of this writing it appears that the litigation may go forward and, under these circumstances, we believe that the proper course is now to devote our attention to that aspect of the problem.

We are, I assure you, grateful for your efforts to resolve the matter.

Sincerely,

WEH:md

cc: Mr. R. G. Calder, Jr.
Mr. E. A. Finney, Jr.

[Enclosed, Finney to Rachlin, 1967, June 12]

# STATEMENT

(Bill submitted March 17, 1967, for $827.44. Paid in full May 1, 1967. Statement submitted April 15, 1967, was for the full amount with a balance due of $958.44 on which the $827.44 would apply, leaving an unpaid balance of $131.00.)

## Statement From April 15, 1967, To June 12, 1967

### Legal Fees

| | | | |
|---|---|---|---|
| 1. | Balance Due .......................... | $131.00 | |
| 2. | Seven days in conferences with clients and working on interrogatories @ $75 per da. | 525.00 | |
| 3. | Conferences with State Development Board (Columbia) (April.17)........... | 50.00 | |
| 4. | Conference with Governor Robert McNair April 25.(Columbia).................. | 50.00 | |
| 5. | Conferences with EEOC ( two days ) May 10,11 Atlanta, Ga. @.$75.per.da.... | 150.00 | |
| 6. | Conference with State Development Board and Technical Education Comm.... (May 12) | 50.00 | |
| 7. | Conferences in New York (two days) May 21, 22 ..@.$75.per.da............ | 150.00 | |
| 8. | Conference with Campbell Soup Co. June 1 ............................ | 50.00 | |
| 9. | Conference with EEOC (Augusta, Ga.) .. | 50.00 | |
| Total | | | $1,075.00 |

### Expenses

| | | |
|---|---|---|
| 1. | One trip to New York ................ | $114.84 |
| 2. | Hotel and food (2.nights)........... | 45.00 |
| 3. | One trip to Atlanta, Ga. ............ | 39.75 |
| 4. | Hotel and food (one night) .......... | 28.00 |
| 5. | One trip to Augusta, Ga. ............ 258 mi. @ 10¢ per mi................. | 25.80 |

| | | | | |
|---|---|---|---|---|
| 6. | Hotel and food (one night) | $ 25.00 | | |
| 7. | Two trips to Columbia (200 mi. @ 10¢ per mi. | 20.00 | | |
| 8. | Extra secretarial help for preparation of answers to interrogatories | 50.00 | | |
| | Total | | $348.39 | |
| | TOTAL | | | $1,423.39 |

We regret very much that we were too busy during May to get out a bill for this.

Respectfully submitted,

Ernest A. Finney, Jr.

Campbell

**DONOVAN LEISURE NEWTON & IRVINE**
**OFFICE MEMORANDUM**

To:
From:
Re:

Date: 6/14/67

Carl

Assuming cost and other factors to indicate written interrogatories to be desireable, why don't we add a list of questions about government contracts. If we get information which we can later use in a suit to enjoin such contracts, well and good. In any event, it should give the opposition a scare and, to that extent, put some pressure on them.

*LAW OFFICES*
*FINNEY AND GRAY*
*16½ WEST LIBERTY STREET*
*SUMTER, S. C. 29151*

*ERNEST A. FINNEY, JR.*
*RUBEN L. GRAY*

*P. O. BOX 836*
*TELE. 775-1737*

June 23, 1967

File

Mr. Carl Rachlin
Legal Director
Scholarship, Education, Defense Fund
150 Nassau Street
New York, New York 10038

Re: Idell D. Kingwood et al.
vs. Campbell Soup Company
et al.

Dear Carl:

We enclose herewith copy of Mr. Donald Hollowell's letter to Mr. William E. Harwick of June 21 in the above-referenced matter.

Yours very truly,

Ernest A. Finney, Jr.

EAF Jr:dmm

Enclosure

[enclosed, Finney to Rachlin, 1967, June 23]

ATLANTA REGIONAL OFFICE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
1776 PEACHTREE STREET, N.W.
ATLANTA, GEORGIA 30309

June 21, 1967

Mr. William E. Harwick
Vice-President, Personnel
Campbell Soup Company
Camden, New Jersey 08101

Re: Maebelle Williams, et al.
v.
Swanson Division of Campbell
Soup Company, Sumter, S. C.

Dear Mr. Harwick:

Pursuant to your letter of June 7 and the two 40-minute conversations which I had on successive days with Mr. Calder last week, I am writing to confirm the cessation of further conciliation efforts in the above-captioned matter at this time.

It is considered regrettable that we were unable to effect a mutual agreement between the parties. This is so even though we conferred innumerable times, formally and informally. Though under Title VII of the 1964 Civil Rights Act a part of our function is to attempt achievement of a just resolution of [illegible] the Commission has found reasonable cause, at no time can the Commission usurp the prerogatives of either the respondent or the charging party in a given case with or without a pending lawsuit. Yet, the effort will be and must be made to bring the parties into agreement whenever possible. I hope that you concur with us that the Commission has made every effort to so do in the instant case.

I must say, however, that I am still at a loss to understand the statement in your letter of the 7th to the effect that "the difficult problem separating the parties was sidestepped." This is particularly true when one considers the fact that in my letter to you of June 5, I invited you "to send immediately to us a statement of your contention." (Emphasis added)

However, Mr. Calder has now made it imminently clear to me in the telephone conversations referred to above that Campbell Soup Company is unwilling to make any concessions whatsoever to the charging parties in advance of the law suit being dismissed. I addressed the matter to Mr. Finney, who, as Counsel for the charging parties (plaintiffs), is the only one that can make that decision. He indicated that he is not prepared to comply with your wish to that extent. Thus, unfortunately, this is the impasse with which we are confronted.

Though it appears that the law suit will now take its course, I remind you that this office stands ready, willing and able to attempt **further** conciliation at any time before the Court case is concluded, upon written request of the parties or the Court.

Thanks to you and Mr. Calder for your courtesy during the period of conciliation.

Sincerely yours,

Donald L. Hollowell
Regional Director

cc: Mr. Robert Calder
Mr. Ernest A. Finney, Jr.

OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA 29201

June 30, 1967

Ernest A. Finney, Jr., Esquire
Attorney at Law
16½ West Liberty Street
Sumter, South Carolina 29150

Matthew J. Perry, Esquire
Attorney at Law
1107½ Washington Street
Columbia, South Carolina 29201

Carl Rachlin, Esquire
Attorney at Law
150 Nassau Street
New York, New York 10038

Messrs. Thompson, Ogletree & Haynsworth
Attorneys at Law
The Daniel Building
Greenville, South Carolina 29601

Charles Horsky, Esquire
Messrs. Covington & Burling
Attorneys at Law
701 Union Trust Building
Washington, D. C. 20005

Re: Idell D. Kingwood, Sallie Burgess, et al -vs-
Campbell Soup Company, Inc., etc., et al
Civil Action No. 67-167

Gentlemen:

This is to advise that the above captioned case, which was listed on the calendar of civil non-jury cases for trial during the two week session of court scheduled to convene July 5, 1967, will not be for trial. The Order of Honorable Robert W. Hemphill filed May 5, 1967, ordered that the time for all matters connected with this litigation be tolled for a period of thirty days from May 1, 1967, which Order removed the case from the trial calendar for this session of court.

Very truly yours,

MILLER C. FOSTER, JR., CLERK

Ann Birch

By: Ann Birch, Deputy Clerk

Steve - 2 Wall St

*LAW OFFICES*
*FINNEY AND GRAY*
*16½ WEST LIBERTY STREET*
*SUMTER, S. C. 29151*

*ERNEST A. FINNEY, JR.*
*RUBEN L. GRAY*

*P. O. BOX 836*
*TELE. 775-1737*

July 1, 1967

Mr. Carl Rachlin
Scholarship, Education, Defense Fund
150 Nassau Street
New York, New York 10038

Re: Kingwood vs. Campbell
Soup Company.

Dear Carl:

Enclosed you will please find a copy of the outline for trial briefs required in this district. We are going to need this brief by August 1.

I would request that you kindly get someone to work on those portions of the brief which require some thought and consideration, particularly questions 6, 7, 8, 9, 10, and 11.

Yours very truly,

Ernest A. Finney, Jr.

EAF Jr:dmm

Enclosure

*LAW OFFICES*
*FINNEY AND GRAY*
*16½ WEST LIBERTY STREET*
*SUMTER, S. C. 29151*

*ERNEST A. FINNEY, JR.*
*RUBEN L. GRAY*

*P. O. BOX 836*
*TELE. 775-1737*

August 3, 1967

Mr. Carl Rachlin
Legal Director
Scholarship, Education, Defense Fund
150 Nassau Street
New York, New York 10038

Re: Idell D. Kingwood, et al.
versus
Campbell Soup Company, Inc.
et al.

Dear Carl:

On June 12, we submitted a bill for expenses and fees in the Campbell Soup Case in the amount of $1,423.39. As of this date we have heard nothing from this bill. As you will recall, I had anticipated going to Houston last week, but because of the low state of my finances, I was unable to go.

I am enclosing herein a statement of expenses from June 12 through August 1. It is my sincere hope that some arrangements can be made immediately to take care of these bills.

Yours very truly,

Ernest

Ernest A. Finney, Jr.

EAF Jr:dmm

Enclosure

cc: Mr. Marvin Rich

*LAW OFFICES*
*FINNEY AND GRAY*
*16½ WEST LIBERTY STREET*
*SUMTER, S. C. 29151*

*ERNEST A. FINNEY, JR.*
*RUBEN L. GRAY*

*P. O. BOX 836*
*TELE. 775-1737*

August 3, 1967

Mr. Carl Rachlin
Legal Director
Scholarship, Education, Defense Fund
150 Nassau Street
New York, New York

Re: Campbell Soup Case

Dear Carl:

Today is August 3, 1967, and I am sure that you will recall that in our earlier conversation and by letter I had requested that a rough draft of the trial brief in the Campbell Soup Case be returned to me by August 1 in order that I could put the finishing touches on it before sending same to the U.S. District Court. It is with deep regret that I must advise that I have not yet received any information on the trial brief from your office.

We have tentatively scheduled the taking of Murphy and Harwick's depositions on September 7, 1967, in Camden, New Jersey. We would appreciate your advising what your disposition is in regard to this. We will take the depositions of the local Campbell Personnel sometimes early in September.

Yours very truly,

Ernest A. Finney, Jr.

EAF Jr;dmm

# STATEMENT

August 3, 1967

| | | |
|---|---|---|
| Bill submitted June 12, 1967. (Nothing paid) | | $1,423.39 |

Statement From June 12, 1967, to August 3, 1967

Legal Fees

| | | |
|---|---|---|
| 1. | June 26, Meeting with Campbell Soup Clients | 25.00 |
| 2. | July 10, Campbell Soup Meeting | 25.00 |
| 3. | July 17, Meeting with Campbell Soup Clients | 25.00 |
| 4. | July 18, 19, 20, 21, Depositions in Campbell Soup Case | 400.00 |

Expenses

| | | |
|---|---|---|
| 1. | Two trips to Columbia, S. C. 230 mi. @ 10¢ per mi. | 23.00 |
| TOTAL | | $1,921.39 |

Respectfully submitted,

Ernest A. Finney, Jr.

EAF Jr:dmm

August 9, 1967

Ernest A. Finney, Jr., Esq.
FINNEY and GRAY
16½ West Liberty Street
Sumter, South Carolina 29151

Dear Ernest:

Carl is away from the office right now, but I have a copy of your letter along with a bill on the Campbell Soup case. I am enclosing $500 on account. August is a very difficult month for us since we must pay out approximately $30,000 for our scholarship program.

I will try to get the balance to you as soon as possible. I know you will understand.

I hope the case is going well.

Sincerely yours,

Marvin Rich
Executive Director

Enclosure as stated
check #1974

*LAW OFFICES*
*FINNEY AND GRAY*
*16½ WEST LIBERTY STREET*
*SUMTER, S. C. 29151*

*ERNEST A. FINNEY, JR.*
*RUBEN L. GRAY*

*P. O. BOX 836*
*TELE. 775-1737*

August 15, 1967

Mr. Carl Rachlin
Legal Director
Scholarship, Education, Defense Fund
150 Nassau Street
New York, New York 10038

Re: Kingwood, et al., vs.
Campbell Soup Co., Inc.
et al.

Dear Carl:

I was called today by the Court Reporter and informed that the record will be ready by the middle of next week, at which time he expects us to deliver him approximately $325.00. We would appreciate it very much if you would send us a check for this and some small contribution on the balance of the expenses of this office.

Immediately upon receipt of this letter, we would appreciate your calling us because I think it is going to be necessary for us to get together in New York this weekend.

Yours very truly,

Ernest A. Finney, Jr.

EAF Jr:dmm

cc: Mr. Marvin Rich

sent to
Mr [illegible]
Room 1916
10/11/67

Campbell Soup

COPY

September 12, 1967

Professor George Cooper
Columbia University School of Law
Amsterdam Avenue, 116 Street
New York, New York

Dear Professor Cooper:

Enclosed you will please find a copy of the Interrogatories which we have propounded to the Campbell Soup Company in the case now pending in the United States District Court for the District of South Carolina. We are also enclosing their answers and objections to said interrogatories.

I am sure that Carl has explained to you that the basis of this case is an allegation of discrimination against members of the Negro race in the employment practices employed by Campbell Soup Company.

Our primary emphasis being that the eighth grade education and the Wonderlic requirement amount to discrimination. We are scheduled to argue these motions on September 18 in Columbia, South Carolina, and would very much appreciate your giving us your comments prior to that time.

Yours very truly,

Ernest A. Finney, Jr.

Ernest A. Finney, Jr.

EAF Jr:dmm

Enclosures

cc: Mr. Carl Rachlin
Mr. Matthew J. Perry

I/

Columbia University in the City of New York | *New York, N.Y. 10027*

SCHOOL OF LAW

435 West 116th Street

September 20, 1967

Ernest A. Finney, Jr., Esq.
Finney and Gray
16 1/2 West Liberty Street
Sumter, South Carolina 29151

Campbell file

Dear Mr. Finney:

I was unfortunately away from my office during the latter part of last week and did not get an opportunity to examine your letter of September 12 and the materials enclosed with it until late Friday afternoon, too late to get off a letter to you setting forth my views and comments on the interrogatories and Campbell's objections in time to reach you before your argument yesterday. I did not have any insights which I considered important enough to justify an emergency phone conversation.

I believe I do have some suggestions which may be of use to you, however, with regard to the future progress of discovery in the case. In particular, it seems to me imperative that you begin discovery with regard to two items which will be crucial in developing an attack on the company's tests. The first of these is a complete set of job descriptions which detail the functions involved in the jobs being tested for with sufficient particularity to enable a professional psychologist to venture an opinion on the usefulness of particular tests in selecting employees for those jobs. The second of these items is data on the relative test performance of white and Negro groups when administered the test at Campbell's facilities in Sumter. This data is essential in showing that the tests are operating unfavorably to Negroes.

It would probably be useful for me to set out my thoughts on these matters at greater length. Rather than do this in a letter, however, I think it would be more useful if I would meet with Mr. Rachlin here in New York after you learn of the outcome of your argument on Monday.

Yours truly,

George Cooper

c.c. to: Carl Rachlin, Esq.
150 Nassau Street
New York, New York

Campbell Soup file

September 25, 1967

COPY

Honorable Robert W. Hemphill
United States District Judge
United District Court
Columbia, South Carolina

Re: Kingwood v. Campbell Soup
Co., Inc.

Dear Sir:

Enclosed please find an Order which we have prepared based upon our notes at the hearing which was held before you in this matter. If this Order meets with your approval, we would appreciate very much your signing same.

If there are any questions or errors of omission or commission, we would be happy to make such corrections you may deem necessary.

Thank you very much for your consideration and cooperation in this matter.

Yours very truly,

Ernest A. Finney, Jr.

EAF Jr:dmm

Enc.

cc: Atty. Matthew J. Perry
Atty. Carl Rachlin
Atty. Homer L. Deakins, Jr.

[enclosed, Finney to Rich, 1967, October 19]

COPY

## STATEMENT

Statement from August 3, 1967, Through October 19, 1967

| | | | |
|---|---|---|---|
| 1. | Balance carried forward | | $ 778.39 |

### Legal Fees

| | | | |
|---|---|---|---|
| 2. | Conference and depositions of Campbell Soup officers, September 7 & 8 @ $100.00 per da. (New York) | $200.00 | |
| 3. | Conference with Judge and Clients Columbia, S. C. Sept. 18 | 100.00 | |
| 4. | Arguments before Court on Defendant's motion to strike interrogatories September 22 | 100.00 | |
| | Total Legal Fees | | $ 400.00 |

### Expenses

| | | | |
|---|---|---|---|
| 1. | Three trips to Columbia, S. C., 345 mi. @ 10¢ per mi. | $ 34.50 | |
| 2. | Two days in New York, Hotel and Food @ $25.00 per da. | 50.00 | |
| 3. | Air transportation from New York to Columbia | 46.31 | |
| | Total Expenses | | $ 130.81 |

| | |
|---|---|
| TOTAL, Balance, Legal Fees & Expenses | $1,309.20 |
| Association and appearance fee for Attorney Matthew J. Perry | 100.00 |
| TOTAL | $1,409.20 |

Respectfully submitted

Ernest A. Finney, Jr.

COPY

October 19, 1967

Mr. Marvin Rich
Executive Director
Scholarship, Education, Defense Fund
150 Nassau Street
New York, New York 10038

Re: Campbell Soup Case

Dear Mr. Rich:

On August 3, 1967, we submitted to your office a bill for $1,921.39, on which you paid $500.00 on August 9 and $700.00 on September 11. This left a balance of $778.39, which was for work done and expenses incurred through August 3, 1967.

Enclosed herein you will find our statement of legal fees and expenses from August 3 through October 19. I am sure that I do not need to remind you that this office is in dire need of at least a portion of these expenses.

Yours very truly,

Ernest A. Finney, Jr.

EAF Jr:dmm

Enc.

cc: Mr. Carl Rachlin

[1968]

LAW OFFICES
FINNEY AND GRAY
16½ WEST LIBERTY STREET
SUMTER, S. C. 29151

ERNEST A. FINNEY, JR.
RUBEN L. GRAY

P. O. BOX 836
TELE. 775-1737

Dear Carl

Enclosed is copy of final complaint. I talked to Farber who wants for public relations reasons not to file on Sat. So I will be in Court at 11:30 A.M. Monday with papers will call you Sunday night or you can call me Sunday night if I omitted anything.

Finney

Farber wants to talk with you Monday Morning and see a copy of complaint.

*Law Offices of*
*Donovan Leisure Newton & Irvine*
*Two Wall Street*
*New York, N.Y. 10005*

WILLIAM J. DONOVAN
1929-1959

GEORGE S. LEISURE
CARL ELBRIDGE NEWTON
RALSTONE R. IRVINE
THOMAS J. McFADDEN
OTTO C. DOERING, JR.
DAVID TEITELBAUM
FRANCIS A. BRICK, JR.
GRANVILLE WHITTLESEY, JR.
CARBERY O'SHEA
JAMES R. WITHROW, JR.
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GEORGE S. LEISURE, JR.
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ROBERT M. LOEFFLER
MAHLON F. PERKINS, JR.
JOHN E. TOBIN
ROBERT F. MORTEN
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WASHINGTON OFFICE
THE FEDERAL BAR BLDG.
1815 H STREET, N. W.

ANDREW J. KILCARR
RESIDENT COUNSEL

January 19, 1968

Carl Rachlin, Esq.
150 Nassau Street
New York, New York

Re: Kingwood v. Campbell Soup Company, Inc. et al.

Dear Mr. Rachlin:

I am enclosing herewith the file in the above-entitled matter which I received from Mr. Hopkins before he departed for Albany.

Since I have heard from neither yourself nor Mr. Hopkins concerning this matter I assume that it has been concluded and, therefore, incumbent upon me to return the file to you.

If you have any questions please feel free to call me.

Very truly yours,

Alfred H. Hoddinott, Jr.

Enclosure

LAW OFFICES
FINNEY AND GRAY
16½ WEST LIBERTY STREET
SUMTER, S. C. 29151

ERNEST A. FINNEY, JR.
RUBEN L. GRAY

P. O. BOX 836
TELE. 775-1737
803

January 26, 1968

Mr. Carl Rachlin, Legal Director
Scholarship, Education, Defense Fund
150 Nassau Street
New York, N. Y. 10038

Re: Campbell Soup Co.

Dear Carl:

Please give the enclosed bill from United Reporting Service your attention.

I would remind you that we have forty days from the date the defendants' Answers were filed, which was about ten days ago, to complete discovery. I believe you will agree that it is now time for us to convef on what additional information we shall need in this matter.

Yours very truly,

Ernest

Ernest A. Finney, Jr.

EAF Jr:dmm

Enc.

Called left message
~~left~~ last wk in
Feb - 1st in March

Campbell Soup

*LAW OFFICES*
*FINNEY AND GRAY*
*16½ WEST LIBERTY STREET*
*SUMTER, S. C. 29150*

*ERNEST A. FINNEY, JR.*
*RUBEN L. GRAY*

*P. O. BOX 836*
*TELE. 775-1737*

March 16, 1968

Mr. Carl Rachlin
Legal Director
Scholarship, Education, Defense Fund
150 Nassau Street
New York, New York

Dear Mr. Rachlin:

The depositions of Messrs. Harwick and Hochreiner are scheduled to be taken on March 22, 1968, at 2:00 o'clock p.m. at Campbell Soup Company in Sumter, South Carolina.

Yours very truly,

Ernest A. Finney, Jr.

Ernest A. Finney, Jr.

EAF Jr:dmm

Historical Society Of Wisconsin

Please Retain Original Order

Folder 12

DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS

CRIMINAL DIVISION

DISTRICT OF COLUMBIA, )
)
Plaintiff, )
) CRIMINAL ACTION NO.
v. ) D.C. 23093-66
)
ARTHUR KINOY, )
)
Defendant. )
)

# OPINION

This is a motion in arrest of judgment. The principal argument[1] being advanced is that defendant's conduct may be reached, if at all, only by contempt proceedings, not by a prosecution for disorderly conduct. The latter, it is said, has a "chilling effect" upon the Bar, and violates various statutory and constitutional provisions.

## I

The rules of the House Committee on Un-American Activities limit counsel's role at hearings to "advising the witness as to his legal rights.

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[1] It is also contended that the information fails to charge an offense. D.C. Code § 22-1107 incorporates the common law concept of breach of the [illegible] (see Hill v. United States, 22 App. D.C. 395, 402 (1903); Masters v. United States, 42 App. D.C. 350, 355 (1914); Hamilton v. United States, 26 App. D.C. 382, 385 (1905); Tyner v. United States, 23 App. D.C. 324, 358, 359 (1904); United States v. Davis, 71 F. Supp. 749, rev'd, 83 U.S. App. D.C. 99, cert. denied, 334 U.S. 849; see Durham v. United States, 94. U.S. App. D.C. 228, 240, note 45), which included such disorderly conduct as loud and boisterous talking (Commonwealth v. Hoxey, 16 Mass. 384 (1920); 24 Am. Jur. 2d Disturbing Meetings §1 (1966); State v. Watkins, 123 Tenn. 502, 130 S.W. 839 (1910)). Even if it be assumed that the charge was laid under that portion of the statute which requires a showing that "any person" was assembled, it would make no difference, for this means only that the offense was committed in the presence of others (cf. Morris v. District of Columbia, 31 A.2d 652 (1943)). The peace offense was so committed here, and had this issue been raised at any time during the trial, the prosecution would have been permitted to amend the information to conform to the evidence. The Court would be reluctant to assume that this is a defect which cannot be rectified by amendment, for that would mean that the statute cannot conceivably be applied to an assembly of the kind here involved and that legislative meetings therefore cannot, under present law, be protected from disorderly persons. See pp. 10-11 infra. Such a construction should hardly be favored. It may be noted that the District of Columbia Court of Appeals has on a number of occasions upheld convictions under section 1107 on the basis of informations in all pertinent respects identical to that used here. Finally, D.C. Code § 22-3111 does not contain the element of assembly.

Counsel is precluded from cross examining other witnesses or from persenting oral argument.[2] Similar limitations have been upheld by the Supreme Court.[3]

On August 16, 1966, defendant's law partner sought to cross-examine a witness in contravention of the committee's rules but was not permitted to do so. The next day, defendant's partner made the same request on behalf of another client, who, he said, would be defamed by the testimony about to be elicited, but again the request was denied in accordance with the committee's rules. Defendant then stated that he was "also . . . an attorney" for the same client and pursued the same request which had just been denied. Defendant's effort was likewise rejected, but he persisted in his demand. The chairman a number of times ordered defendant to stop, he repeatedly rapped his gavel to keep order, and he told defendant again and again to be seated--all to no avail. Defendant's voice increased in volume as he attempted to drown out both the chairman's voice and the gavel, and he failed to take his seat. Ultimately after defendant had disregarded a final order to sit down, he was ordered ejected an and was removed from the hearing room. Throughout this episode defendant was loud and boisterous and he continued to be loud and boisterous while he was being removed.[4]

Defendant argues that his conduct was protected because he was engaged in legal argument designed to secure for his client the right of cross-examination or to make a record that cross-examination was not being allowed. There are several difficulties with this position.

First. The committee's rules provide no role whatever for one who, as this defendant, represents someone other than the witness on the stand.[5] Since defendant thus had no standing to engage in legal argument in the first place, the contention that his argument was protected from interruption is "bootstrap" at best. Second. Even if it be assumed that defendant had somehow achieved the status of counsel within the meaning of Rule VII, he still was not entitled to present argumen because, unlike court rules, the rules of the committee expressly prohibit the presentation of legal argument by counsel.[6]

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2/ Rule VII, Rules of Procedure, House Committee on on Un-American Activities.

3/ *Hannah* v. *Larche*, 363 U.S. 420, at 443-445, 485 note 7.

4/ It is, of course, a violation of the statute to be loud and boisterous while being removed from a committee hearing pursuant to the chairman's order. Inasmuch as defendant was not "counsel" within the meaning of Rules VII and VIII of the Rules of the House Committee on Un-American Activities, his ejection was governed by Rule 26 (a) of the Rules of the House of Representatives. Cf. *United States* v. *Miller*, 152 F. Supp. 781, 788 (D.C. D.C., 1957), *rev'd on other grounds,* 104 U.S. App. D.C. 30.

5/ Rule VII, which delineates the function of counsel at committee hearings, provides that "the participation of counsel during the course of any hearing and *while the witness is testifying* shall be limited to advising *said witness* as to his legal rights" (emphasis added).

6/ Rule VII provides that "counsel shall not be permitted to engage in oral argument with the Committee, but shall confine his activity to the area of legal advice to his client." The Chief Justice, speaking for the Court in Yellin v. United States, 374 U.S. 109 (1963), stated that, after counsel for a witness before the House Committee on Un-American Activities had unsuccessfully attempted to bring a matter to the attention of the committee, he "would not have been justified in continuing, since Committee rules permit counsel only to advise a witness, not to engage in oral argument with the Committee. Rule VII (B)" (374 U.S. at 112). Compare the response of defendant here, who, when the chairman remonstrated with him for arguing in violation of the rules, replied, "Of course lawyers always argue questions, Mr. Chairman" (Tr. 197)

Third. It was perfectly obvious long before defendant was asked to sit down that the committee was not about to deviate from its rules by allowing just this particular lawyer to cross-examine just this particular committee witness. As for making a record, that, too, had been made long before the situation came to a head.[7] In short, prolongation of the argument served no conceivable legitimate purpose. Fourt Even legal argument must be kept within bounds; it may not be offensive; and it may not deteriorate into a persistent effort to drown out the voice of the presiding officer.

Attorneys and defendants have many times been held in contempt of court under similar circumstances.[8] In Jones v. United States, 80 U. S. App. D.C. 109, 151 F. 2d 289 (1945), a case with striking factual parallels to the instant case, the U.S. Court of Appeals for this Circuit upheld a contempt conviction of a defendant acting as his own attorney who continued to press a particular legal point after it had repeatedly been overruled and he had several times been told to stop. Said the court (80 U.S. App. D.C. at 110):

> Whenever counsel or a defendant on trial or a witness oversteps the bounds of propriety and refuses to heed the admonitions of the court or to obey in the presence of the court a lawful order of the court, he commits an act of contempt. Appellant, in persisting to address the court in relation to a matter about which the court had already ruled, after being repeatedly warned, was guilty of conduct subversive to due and orderly procedure in the courtroom, and tending to obstruct the due administration of justice, and such an offender ought to be, and properly was, disciplined. Ex parte Terry, 128 U.S. 289, 9 S. Ct. 77, 32 L. Ed. 405.

## II

Vigorous legal argument on behalf of a client is not only the privilege of an attorney; it is his duty. Courts will not be enlightened on the issues if the positions of the parties are not advocated with vigor and intelligence. More important, the protection of the rights of citizens -- particularly when issues of great controversy and emotional content are involved -- depend upon the steadfast determination and fearless performance of counsel. Yet this obviously does not mean that counsel can do as he pleases. There are limits; and in each individual case it is the duty of the trier of facts to determine whether or not the limits of the permissible were transgressed. From what has been related above concerning the defendant's actions, it is clear that his conduct exceeded the bounds of legitimate legal argument and representation, was therefore neither protected nor priviledged, and (as in the Jones case) could have been punished as contempt.

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7/ Defendant had just stated that he wanted the record to show that he was taking "strenuous objection" to the failure to allow cross-examination; yet, after being told to be seated, instead of complying, he began once more to make a statement ostensibly for the record.

8/ See, e.g., Sacher v. United States, 343 U. S. 1 (1952); Halliman v. United States, 182 F. 2d 880 (C. A. 9, 1950), cert. denied, 341 U. S. 952; United States v. Galante, 298 F. 2d 72 (C.A. 2, 1962); United States v. Landes, 97 F. 2d 378 (C.A. 2, 1938); McInnis v. United States, 191 F. 2d 157 (C.A. 9, 1951), cert. denied, 342 U. S. 953; United States v. Hall, 176 F. 2d 163 (C.A. 2, 1949), cert. denied, 338 U. S. 851.

For that reason it is difficult to perceive what basis there is for the contention that the disorderly conduct conviction would have a "chilling effect" upon or would intimidate attorneys.

This conviction renders nothing illegal that would not have been illegal in any event. It does not extend by one iota the area of impermissible conduct. If it did, this Court would be the first to resist the extension. All it does is to uphold the propriety of one form of punishment proceeding (disorderly conduct) where another (contempt) has commonly been available.

Defendant argues that there is a great qualitative difference between a straight criminal charge and a criminal contempt charge,[9] and that the former is less proper and less legitimate than the latter. Quite the opposite is true.

Disorderly conduct is a "crime" within the meaning of the Constitution, and a prosecution for disorderly conduct accordingly proceeds in accordance with the meticulous constitutional protections applicable to criminal prosecutions generally. Punishment for contempt of court, on the other hand, may be imposed summarily, without any procedural safeguards whatever. All the judge needs to do in a contempt matter is to make a finding that the defendant is in contempt, and, after giving him a chance to make an explanation, impose the punishment. Summary contempt (which this would be) dispenses with the usual criminal safeguards of notice or hearing, indictment or information, bill of particulars, jury trial, issuance of process, evidence, or argument. Moreover, the maximum sentence is normally not fixed by the legislature but is within the discretion of the judge.[10]

The use of the contempt power where the regular criminal process is available has frequently been criticized by thoughtful civil libertarians for just these reasons. Thus, Mr. Justice Black, dissenting in Green v. United States, 356 U.S. 165, 194 (1958), called the summary contempt power "perhaps, nearest akin to despotic power of any power existing under our form of government," and referred to the procedures used to punish contempts as "arbitrary" (356 U.S. at 196, note 5) and "dangerous" (356 U.S. at 200). In the same opinion, Justice Black characterized contempt as "the offense with the most ill-defined and elastic contours in our law [which] is now punished by the harshest procedures known to that law" (356 U.S. at 200). The American Civil Liberties Union in its amicus curiae brief in the Barnett case (supra note 9) criticized the summary contempt procedure as an "anomaly" (p. 1), in which the judge's power is "virtually limitless as to the scope of the offense, the means of punishment and the procedure employed" (p. 6).

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9/ In its brief amicus curiae in United States v. Barnett, 376 U. S. 681 (1964), the American Civil Liberties Union contended that "in 'normal and ordinary', as distinguished from 'technical usage, there can be no difference' between criminal contempt and any other crime" (p. 15). It may be noted that in England contempts are misdemeanors. Halsbury, Laws of England 280.

10/ The relative simplicity of contempt is undoubtedly the reason why there are so few convictions for disorderly conduct for misbehavior before judicial or quasi-judicial tribunals. But see State v. Sturges, 48 Mo. App. 263 (1892); State v. Smith, 218 A. 2d 147 (N.J., 1966). Judges are not likely to bother with the more cumbersome criminal process when they have the power to proceed swiftly and summarily by contempt.

It is illogical and contrary to human experience to suppose that the use of the complex, cumbersome, and carefully regulated criminal process instead of the swift and summary contempt process, to reach the same conduct, would inhibit or intimidate anyone.

Acceptance of defendant's broad position -- that, because of the availability of contempt, disorderly conduct laws may not be employed to reach the misconduct of those appearing before courts or legislative bodies -- would impose the use of a procedure (contempt) potentially far more oppressive and far more readily subject to abuse than the normal criminal process which defendant would discard. That approach would require in every case the invocation of a greater, more unbridled power, where a lesser, more circumscribed power might well be adequate to do the job. This is undesirable both from the point of view of the defendants who would be affected by this strange doctrine as well as from the larger perspective of the protection of civil liberties.

On the other hand, to the extent that defendant attacks the use of disorderly conduct laws more narrowly (that is, only in their congressional setting),[11] the argument is likewise unpersuasive, but for the opposite reason. For the fact is that -- as will be shown infra -- elimination of the disorderly conduct sanction to punish misconduct before a legislative committee would leave no sanction at all. In other words, defendant would have the Court construing [12] the disorderly conduct law as being inapplicable to the present situation on the theory that it would displace another remedy (contempt), when, as a practical matter no such remedy exists.

## III

Defendant maintains that his conviction constitutes an invasion of legislative prerogatives by the court and a violation of the principle of the separation of powers. [13]

It is doubtful that defendant has standing to raise this issue. The privilege, if any, is that of the legislature, not that of defendant,[14] and the legislature

---

11/ It is unclear how any logically consistent distinction can be drawn between disorderly conduct before a court and such conduct before a legislature committee. If, as shown supra, the criminal law is appropriate to misconduct in a judicial setting, it is equally appropriate to misconduct before a legislative committee.

12/The statute itself contains none of the exceptions defendant would read into it, but covers disorderly conduct wherever it occurs in the District of Columbia. Moreover, as D.C. Code § 22-3111 shows, Congress intended to cover disorderly conduct within government buildings.

13/Defendant also suggests that the matter must be decided by the tribunal which heard the misconduct or not at all. But it is to defendant's advantage to have the controversy heard by a different, and therefore presumably more impartial, tribunal. Cf. Offutt v. United States, 348 U.S. 11 (1954); Cooke v. United States, 267 U.S. 517 539 (1925); United States v. Bradt, 294 F. 2d 879 (C.A. 6, 1961), rev'd on other grounds, 370 U.S. 230.

14/Cf. Ponzi v. Fessenden, 258 U.S. 254 (1922); Hebert v. Louisiana, 272 U.S. 312 (1926) has not asserted it.15/

Moreover, these proceedings, far from being an interference with the legislature, are an essential aid to its orderly operation. If an exception with respect to congressional hearings were to be read into the disorderly conduct law (in spite of its all-inclusive language and in spite of a long-standing contrary assumption) 16/ there would be no effective sanction whatever for disruptive conduct before the Congress.

The only contempt of Congress statute (2 U.S.C. § 192) applies solely to refusals to testify or to produce evidence -- not to contumacious or disorderly behavior generally. The only conceivable non-judicial remedy is a trial before the entire House of Representatives -- a procedure which was found to be so impractical that it has long been in disuse.

In other words, if the disorderly conduct charge is struck down on the theory that its use invades congressional prerogatives, Congress would be unprotected from disruptive and contumacious tactics. The day such a decision is announced, anyone appearing before a congressional committee, whether as a witness or as an attorney, 17/ could be as disruptive as he pleased, 18/ secure in the knowledge that no effective sanction was available.

Obviously a court could no more pick and choose among legislative committees by deciding to protect the proceedings of only some of them from disorderly conduct, than the Executive could decide, with propriety, to enforce the orders of only some of the courts. Thus, to leave one congressional committee defenseless against disruption is to leave all committees at the mercy of unruly tactics. A number of House and Senate Committees deal with issues which arouse emotion and passion in many quarters; there must surely be some individuals who would not hestitate to interfere with the work of these bodies if they felt they could do so with impunity.

---

15/ On the morning of the trial, the United States Attorney, at the request of counsel for the committee, moved to quash certain subpoenaes which had been issued in this case. The committee could have at the same time represented that it considered defendant's trial to be an invasion of its prerogatives. It did not do so. Moreover, a number of other persons had been charged the previous day with disorderly conduct upon their ejection from the hearing room, to the knowledge of the committee and without its objection. Cf. Chapman v. United States, 8 App. D.C. 302, 310-11 (1896).

16/ Thomas Jefferson's Manual of Parliamentary Practice, which still governs the proceedings of the House of Representatives, states that Congress "may provide by law for an undisturbed exercise of their functions, e.g. for the punishment of contempts, of affrays or tumult in their presence, &c.; [but until it acts Congress is not unprotected]...the ordinary magistrates and courts of law being open and competent to punish all unjustifiable distrubances or defamations..." (p. 56) [presumably under the common law of crimes]. Ronald Goldfarb, in his excellent book "The Contempt Power" (1963), likewise assumes that "misconduct before Congress woul be covered by some prevailing breach of the peace statute..." (p. 303).

17/ This immunity would actually extend to one whose relationship to the proceeding is much more tenuous. A mere claim of standing -- such as this defendant asserted (see p. 3 supra) -- would confer immunity from sanctions for disruptive conduct.

18/ Disorderly conduct is not confined to loud and boisterous talking but includes many other breaches of the peace. Moreover, defendant has provided no tenable distinction between immunity from criminal prosecution for disorderly conduct and immunity from other aspects of the criminal law(e.g., intoxication, assault, or worse

History teaches that, in a constitutional democracy such as ours, unpopular individuals or minorities depend far more heavily upon the protection of the processes and procedures of courts and legislative assemblies than does the majority (which in the last analysis has the strength to protect its interests without the intervention of an orderly legislative and judicial process). Civil liberties are not advanced when disruption of that process is encouraged by being permitted to go unpunished.

The motion is denied.

/s/ Harold H. Greene
JUDGE

September 29, 1966

IN THE COURT OF GENERAL SESSIONS
District of Columbia

DISTRICT OF COLUMBIA )
)
-vs- )
)
ARTHUR KINOY )

Brief in Support of Motion in
Arrest of Judgment

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IN THE COURT OF GENERAL SESSIONS
District of Columbia

DISTRICT OF COLUMBIA )
)
-vs- ) Brief in Support of Motion in Arrest of Judgment.
)
ARTHUR KINOY )

The motion in arrest of judgment raises a number of fundamental jurisdictional questions and questions arising on the face of the record which, it is submitted, require that the judgment of conviction be vacated.

## STATEMENT OF FACTS

The facts relevant to the within motion are undisputed.

Arthur Kinoy, a member of the Bar and a professor of law was before the House Un-American Activities Committee representing two clients. Upon the occasion of a witness mentioning adversely the name of one of his clients, Mr. Kinoy rose to claim the right to cross-examine the witness. There ensued a colloquy as follows:

> "Mr. Kinoy: Mr. Chairman, I would like to be heard on that motion, and I also am an attorney for Mr. Teague. Do I understand that it is the ruling of this committee that the fundamental right of cross-examination is not to be accorded to witnesses who are called before this committee when the committee is attempting to defame?
>
> Mr. Pool: You are arguing the question.
>
> Mr. Kinoy: Of course lawyers always argue questions. Mr. Chairman.
>
> Mr. Ashbrook: You didn't argue the question; you made a misinterpretation of fact when you said we are endeavoring to defame something.
>
> He is totally our of order, Mr. Chairman. Such is not the case.
>
> Mr. Kinoy: Mr. Chairman, that question will be settled in Federal Court whether you are attempting to defame witnesses.
>
> Mr. Ashbrook: You made it as a statement of fact, and as a lawyer you know you are absolutely wrong. You are out of place.
>
> Mr. Pool: The objection is overruled.
>
> Mr. Kinoy: May the record show we take a strenuous objection to your ruling.
>
> Mr. Pool: Now sit down. Go over there and sit down. You have made your objection. You are not going to disrupt this hearing any further.

Mr. Kunstler: Mr. Chairman, you don't have to deal discourteously to an attorney in front of you. That is wholly un-American.

Mr. Pool: I will deal anyway I want under the rules in this hearing. I have just told him to be quiet and I ask you to sit down now.

Mr. Kinoy: Mr. Chairman, let the record show-- don't touch a lawyer. Mr. Chairman --

Mr. Pool: Remove the lawyer.

Mr. Kinoy: Mr. Chairman, I will not be taken from this courtroom. I am an attorney-at-law and I have the right to be heard."

(Stenographic transcript of hearings before HUAC August 17, 1966, 211-213 introduced in evidence in the hearing before this court.)

At the point in the transcript when Mr. Kinoy stated "Mr. Chairman let the record show--" and before the chairman ordered him removed, Mr. Kinoy was seized, a number of deputy marshals began to remove him from the hearing room, and he was placed under arrest. He was thereupon promptly taken to police headquarters.

A few moments after his removal, and as a result of colloquy between the chairman of the committee and other counsel present, Mr. Pool stated the following:

"Bring the gentleman back in."

(HUAC transcript page 220)

As the testimony before this court showed, Mr. Kinoy could not be returned because he had been arrested and detained at the police headquarters

The information filed against Mr. Kinoy was as follows:

"That Arthur Kinoy late of the District of Columbia aforesaid on or about the 17th day of August in the year A.D. 1966 in the District of Columbia aforesaid and on New Jersey and Independence Ave., S.E. and, in a public place, to wit: Cannon Building did then and there engage in loud and boisterous talking and other disorderly conduct contrary to and in violation of an Act of Congress police regulation in such case made and provided and constituting a law of the District of Columbia."

The statute under which the proceeding was brought reads as follows:

> "Unlawful assembly-Profane and indecent language. It shall not be lawful for any person or persons within the District of Columbia to congregate and assemble...in or around the public building... and engage in loud and boisterous talking or other disorderly conduct..." D.C. Code 22-1107. 1/

In support of the charge, the prosecution's witnesses testified that Mr. Kinoy spoke in a loud voice, did not discontinue his arguement when told by the chairman to sit down, and vigorously protested his being carried from the room. No profanity was suggested nor was there any suggestion that Mr. Kinoy uttered anything other than matters constituting his legal argument or his protest against removal. While upon this motion we do not ask the court to pass upon any factual matters, it must be noted that the prosecution's characterization of Mr. Kinoy's conduct was sharply disputed by a number of prominent members of the bar who were in the hearing room with Mr. Kinoy. It was also decisively contradicted by the transcript of the hearing. 2/

The record is barren of any of the following:

1) Any proof that Mr. Kinoy had assembled or congregated with anyone or had participated in any way except as an attorney for his client;
2) Any formal request by the House Committee, the House, or anyone connected with the committee that Mr. Kinoy should be prosecuted; indeed the record affirmatively shows that the chairman of the committee sought to have Mr. Kinoy returned.
3) Any action by a majority of the committee or any formal action of the committe with respect to the conduct of Mr. Kinoy.

The record before this court shows that Rule VIII of the rules of the committee provides:

> "Conduct of counsel. Counsel for a witness should conduct himself in a professional, ethical and proper manner. His failure to do so shall, upon a finding to that effect, by a majority of the committee or subcommittee, before which the witness is appearing subject such counsel to disciplinary action, which may include, warning, censure, removal of counsel from the hearing, or a recommendation of contempt proceedings."

Upon the foregoing record this court adjudged Mr. Kinoy guilty of the offense charged.

It is submitted that upon the undisputed facts this court lacks jurisdiction over this matter, and that the conviction is contrary to law.

---

1/ For the convenience of the court we have appended the full text of the statute as an appendix to this memorandum.

2/ The contrast between the expansive testimony of the prosecution's witnesses and the official transcript is truly remarkable. Mr. Kinoy was told to sit down not three times as stated by one marshal or six times as stated by another, but as the transcript shows, on only one occasion. Mr. Kinoy, as the transcript show was seized by the marshals before Mr. Pool asked that he be removed, not afterwards as stated by the marshals. Notwithstanding the emphasis by the marshals on the loudness of Mr. Kinoy's voice, and the charge that he was shouting, the record gives no hint that anyone in the committee thought Mr. Kinoy's voice was too loud.

## Point I

### THE INFORMATION DOES NOT CHARGE AN OFFENSE UNDER THE STATUTE: THE PROOFS DO NOT INCLUDE AN ESSENTIAL ELEMENT OF THE OFFENSE: AND THE STATUTE BY ITS TERMS IS NOT APPLICABLE TO THE INSTANT CASE.

### IF THE STATUTE IS INTERPRETED TO ENCOMPASS THE INSTANT CASE IT IS VOID ON GROUNDS OF VAGUENESS, AND IS VIOLATIVE OF THE FIRST AND SIXTH AMENDMENTS OF THE CONSTITUTION.

The statute sought to be invoked here is Sec. 22-1107 of the District of Columbia Code. As applicable here the statute reads as follows:

> "Unlawful assembly - Profane and indecent language. It shall not be lawful for any person or persons within the District of Columbia to congregate and assemble . . . in or around any public building . . . *and* engage in loud and boisterous talking or other disorderly conduct." 3/ (emphasis supplied)

It is clear that under the statute as applied to this case two elements are required:

1. Congregation and assembly in a public building; and 4/
2. Loud and boisterous talking or disorderly conduct.

The complaint does not even charge congregation and assembly

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3/ While the information does not specifically designate the statute, it is obviously based upon Sec. 22-1107 since the statutory language is to some extent followed. Moreover, the only other disorderly conduct statut is Sec. 22-1121 and it is evident by the merest inspection of that statute that no offense is being charged thereunder. The only reference to shouting or noises in that statute, refers to night time noises. These charges have not been made in this case.

4/ While the work "and" is, on occasion, taken to mean "or", it is not possible to read this statute except by giving full force to the conjunctive Unless so read the statute would mean that it is unlawful to congregate and assemble without more, a reading not permissible under the First Amendment.

and of course there was no proof thereof. The proofs in fact were that Mr. Kinoy represented two clients and functioned exclusively as a lawyer. There is not an iota of suggestion that he was part of a group or an assembl

We need not here deal with another type of fact situation, i.e., an individual who is part of a group or assembly and then singly engages in loud and boisterous talking. There is no charge, nor can there be, that Mr. Kinoy was ever part of any congregation or assembly.

The statutory words "congregate" and "assemble" have specific and well defined meanings, as in People v. Carcel, 3 N.Y. 2nd 327, 144 N.E. 2nd 81,85 (1957):

> "The term 'congregating' implies and is usually applicable to the coming together of a considerable number of persons (Powell v. State, 62 Ind. 531 (1878), or a crowd (Webster's New Collegiate Dictionary; the Oxford Dictionary [1923]) and a crowd has been defined as a throng, multitude or great number of persons (People v. Phillips, 245 N.Y. 401,402, 157 N.E. 508,509)."

"Assemble" is defined "to bring or summon together into a group, crowd, company, assembly or unit" (Webster's Third New International Dictionary (1961) ). The same work defines "congregate" as "to collect together into a group, crowd or assembly."

The general proposition that a criminal statute in the conjunctive requires proof of all elements of the offense seems too obvious to require citation. It would be sufficient to refer the court to the cases which establish the applicability of that proposition to disorderly conduct cases. In State v. Mullen, 67 N.J.L. 451,51 A,461(1902), the defendant was arrested under a statute prohibiting "loud and offensive or indecent language." The offense supposedly took place at a school meeting. The court said:

> "That Mullen used loud language is proven. It was evidently an excitable school meeting and there was much earnest talk. Mullen had made motions which had been ruled out of order. The proof of loud language, however, does not meet the statute the offense is 'loud and offensive or indecent language.' There was not the least testimony that what he said was offensive or indecent. If all who are loud and persistent in soliciting support for their candidates or views at public elections or school meetings are to be held disorderly persons, it will lead to a new view as to who are disorderly persons." at 461.
>
> See also State v. D'Aloia, 2 N.J. Misc. 1164, 146A. 426 (Court of Common Pleas, Essex County 1924).

In Commonwealth v. Lombard, 321 Mass. 294,73 N.E. 2nd 465 (1947), the defendant was charged under a statute making it a crime to accost or annoy persons of the opposite sex "with offensive and disorderly act or language." The defendant was charged with accosting a young woman "with certain offensive acts and language" and the court ruled that the complaint had not charged him with a crime, stating:

> "We think that 'offensive' and 'disorderly' have different meanings, and that to come within the prohibition of the statute the accosting and annoying must be both 'offensive' and 'disorderly.' (citing cases) And we do not feel called upon at this time to define the precise meaning of either word.
>
> "We are therefore of the opinion that the defendant is right in his contention that the complaint, which charges him only with acts and language which were 'offensive'; but does not allege that such acts and language were 'disorderly,' does not charge him with a crime."(citing cases) at 466,467.

In Commonwealth v. Greene, 410 Pa. 111, 189 A.2nd 141(1963), the court dealt with the statute which defined disorderly conduct as the making of "any loud, boisterous and unseemly noise." The court said:

> "It must be noted that noise, which was practically the entire substance of the accusation in this case must, under the Act, if it is to constitute disorderly conduct, be loud, boisterous and unseemly. It is admitted that motor propelled go-karts traveling at a speed of approximately 30 to 35 miles per hour make a loud and boisterous noise. Is that noise also unseemly? Something is unseemly when it is not fitting or proper in respect to the conventional standards of organized society or a legally constituted community." at 143.

The court analyzed the proofs and, after it came to the conclusion that the defendant's conduct was not unseemly, reversed the conviction.

The statute is designated in the code under the title "Unlawful assembly - Profane and indecent language". The first portion of the statute is apparently a statutory substitute for the common law crime of unlawful assembly.5/ The second portion of the statute dealing with obscenity and profanity follows a semi-colon and obviously deals with wholly separate matters. While a code title of a statute might, as a general rule, not be wholly dispositive as to its meaning, it certainly is an important clue to the proper interpretation of the statute. Federal Trade Commission v. Mandel Brothers,Inc., 359 U.S. 385 (1959). In this case an omission of the charge of assembly or congregation is an omission of the most decisive portion of the statute in the application of the first part thereof.

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5/ The common law definition of unlawful assembly is "any gathering togeth of three or more persons, with intent to disturb the public peace, accompanied by some overt act or acts to effect that intent . . ." State v. Butterworth, 104 N.J.L. 579,583, 142 A. 57 (1928)

Of course, a plain reading of the statute makes clear that, whatever else it applies to, it certainly cannot extend to the process of a legal argument. Indeed the effort to apply an inapplicable statute has been the difficulty with this case from the very beginning. A lawyer's argument conceivably can be loud, but how can one state on this record that Mr. Kinoy was boisterous, which means "violent; rough in operation; violent and rough in behavior; coarse in quality"? Edwards v. Hollywood Canteen, 160 P. 2nd 94 (Cal. Dist. Ct. App. 1945). And, whatever else a lawyer making an argument before a tribunal may be doing, he is certainly not congregating and assembling.

Thus, on the face of the complaint, there is no violation of the statute and the very basis of the proofs negate the applicability of the statute. The conviction must fail for failure to charge an offense and for lack of evidence to support the charge. Louisville v. Thompson, 362 U.S. 199 (1960).

However, if this statute is to be construed as not requiring congregating and assembling, the statutory language notwithstanding, or that a lawyer representing a client before a legislative committee can, by some novel interpretative technique, be found to be congregating and assembling, then the conviction must be set aside for the failure of the statute to afford fair warning that such conduct has been made a crime. Bouie v. Columbia, 378 U.S. 347 (1964). No attorney can fairly be held to assume that the vigorous advocacy and defense of his client's rights could subject him to summary arrest under a statute characterized as prohibiting unlawful assembly, or that such advocacy could be considered part of a congregation and assembly, or that the clear use of the conjunctive would be ignored. To hold otherwise would be a gross violation of due process of law.

> "When a statute on its face is narrow and precise, however, it lulls the potential defendant into a false sense of security, giving him no reason even to suspect that conduct clearly outside the scope of the statute as written will be retroactively brought within it by an act of judicial construction. If the Fourteenth Amendment is violated when a person is required 'to speculate as to the meaning of penal statutes,' as in Lanzetta, or to 'guess at [the statute's] meaning and differ as to its application,' as in Connally, the violation is that much greater when, because the uncertainty as to the statute's meaning is itself not revealed until the court's decision, a person is not even afforded an opportunity to engage in such speculation before committing the act in question."
> Bouie v. Columbia, supra, at 352.

Furthermore, to construe this statute to punish the conduct of Mr. Kinoy renders the vagueness of the statute vulnerable on yet additional grounds. The statute so construed severely infringes rights guaranteed under the First Amendment to the United States Constitution. As Mr. Justice Brennan observed in N.A.A.C.P. v. Button, 371 U.S. 415,429 (1963), "The First Amendment also protects vigorous advocacy, certainly of lawful ends, against governmental intrusion." Similarly, such an interpretation would strike at the very heart of a right necessarily implied in the Sixth Amendment - the right of an attorney to represent a client by whom he was retained, free from the fear of harrassment.
See Holt v. Virginia, 381 U.S. 131 (1965).

These major constitutional questions emerge from an effort to use the statute in a situation never intended to be covered there by. All that is required at this point is a reading of the statute by its plain language. So read, it cannot possibly apply to the instant case.

## Point II

### THE PROSECUTION AND ARREST HEREIN INTERFERE WITH THE BASIC AND TIME-HONORED PRIVILEGES OF AN ATTORNEY AND CONSTITUTE A VIOLATION OF THE CONSTITUTIONAL GUARANTEES OF FREEDOM OF SPEECH, AND THE RIGHT TO COUNSEL.

The unprecedented attempt to prosecute a lawyer under a disorderly persons statute for the manner in which he presents an oral argument--the equally unprecedented arrest of a lawyer in the very midst of oral argument--require consideration of the time-honored privileges of an attorney to represent his client, conduct an argument on his behalf and be free from arrest while so engaged.

The foregoing privileges of an attorney emerge from the familia duty of the lawyer to give his "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability...no fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty." Canons of Professional Ethics of the American Bar Association, No. 15.

The classic formulation of the duty of the lawyer appears in th colloquy between Lord Erskine and Buller, J. as reported in the following interchange:

> "At length Erskine said, 'I stand here as an advocate for brother citizen, and I desire that the word "only" be recorded;' whereupon Buller, J. said, "Sit down, Sir! remember your duty or I shall be obliged to proceed in another manner,'--to which Erskine retorted, 'Your Lordship may proceed in whatever manner you think fit. I know my duty as well as your lordship knows yours. I shall not alter my conduct.' The Judge took no notice of this reply. Lord Campbell speaks of the conduct of Erskine as a 'noble stand for the independence of the Bar..'" Oswald, Contempt of Court, 3d Ed., pp. 51,52.

Lord Erskine's formulation of the lawyers' duty, is the basis for the lawyers' absolute privilege from criminal prosecution for his argument

As Lord Mansfield pointed out,

> "Neither party, witness, counsel, jury or judge can be put to answer civilly or criminally for words spoken in office." Rex v. Skinner, 98 English Reports. 529 (King's Bench, 1772)., at 530,

quoted with approval by Cardozo, J., Andrews v. Gardiner, 224 N.Y. 440, 121 N. 341 (1918). Indeed, as Lord Mansfield pointed out in that case (involving indictment of a judge) "to go on an indictment would be subversive of all ideas of a constitution."

A lawyer is not required to be right; he may assert with utmost vigor a proposition whether or not it be correct. *Platnauer* v. *Superior Court* 32 Cal. App. 463, 163 Pac. 237 (1917). He is entitled to be persistent, and under given circumstances has been sustained even though he did not obey an order to sit down. *Curran* v. *Superior Court*, 72 Cal. App. 258, 236 Pac. 975 (1925).

> "An advocate is at liberty, when addressing the Court in regular course, to combat and contest strongly any adverse views of the Judge or Judges expressed on the case during its argument, to object to and protest against any course which the Judge may take and which the advocate thinks irregular or detrimental to the interests of his client, and to caution juries against any interference by the Judge with their functions, or with the advocate when addressing them, or against any strong view adverse to his client expressed by the presiding Judge upon the facts of a case before the verdict of the jury thereon. An advocate ought to be allowed freedom and latitude both in speech and in the conduct of his client's case." Oswald, *Contempt of Court*, 3d Ed., pp. 56, 57.

The considerations upon which these privileges of the attorney are based are the interest of society in the maintenance of an independent ba the integrity of the adversary system of justice, and the continued functioning of the courts with the aid of attorneys.

These privileges which are most often considered in contempt cases, emerge again in the field of libel, both civil and criminal. The rule of absolute privilege in respect to a lawyer's statements in court in civil libel cases is well known. Equally does the absolute privilege apply in criminal libel cases. As stated in *Ange* v. *State*, 98 Fla. 538, 123 So. 916 (1929 "no matter how false or how malicious such statements may in fact be, the word used by attorneys are privileged. See also *People ex rel Bensky* v. *Warden of City Prison*, 258 N.Y. 55, 179 N.E. 257 (1932), where the court quoted with approval *Munster* v. *Lamb*, 11 Q.B.D. 588, 605, as follows:

> "No action of any kind, no criminal prosecution, can be maintained against a defendant, when it is established that the words complained of were uttered by him as counsel in the course of a judicial inquiry, that is, an inquiry before any court of justice into any matter concerning the administration of the law."

Bleeker v. Drury, 149 F. 2d. 770 (2nd Cir., 1945), though involving a matter of privilege in a civil libel case, sets out the basis of the attorney's privilege as follows:

> "Privilege is founded on public policy. Fearless administration of justice requires, among other things, that an attorney have the privilege of representing his client's interests, without the constant menace of claims for libel." at 771.

The privilege here at issue extends as well to legislative as to judicial procedures. Yancey v. Commonwealth, 135 Ky. 207, 122 S.W. 123 (19

In evaluating the significance of the immunity of an attorney from prosecution for criminal libel note should be taken of the fact that a criminal libel is premised on a threat of disturbance of the peace. Garrison v. Louisiana, 379 U.S. 64, 68 (1964); Beauharnais v. Illinois, 343 U.S. 250, 254 (1952).

It seems obvious on the face of it that if the privilege extends to the content of the words used, it must certainly encompass the tone of voice and the decibel level the lawyer uses. Viewed in this light, the efforts to subject Mr. Kinoy to criminal prosecution for disorderly conduct because of alleged loud and boisterous language in the very midst of an oral argument as an attorney is an indefensible assault upon the privileges, and indeed duties, of an attorney.

As the court pointed out in People ex rel Bensky v. Warden of City Prison, supra., (179 N.E. 259)

> "The underlying principle covering the courts of England and our own courts is that the proper administration of justice depends on freedom of conduct on the part of counsel and parties to litigation." (emphasis supplied)

The protection of this conduct demands that an attorney be protected from prosecution not only under libel laws, but under any "Breach of the Peace" statutes which could be construed to make the performance of professional duty a criminal act.

Whatever may be the limitations upon an attorney as articulated in some contempt cases when his conduct is considered as intentionally obstructing the administration of justice, the disorderly persons statute and the criminal process has never been the framework within which such a question is to be considered. Again it is appropriate to refer to Lord Mansfield, in Rex v. Skinner, supra. After emphasizing the absolute privilege from criminal prosecution he states: "If the words spoken are opprobrious or irrelevant to the case, the court will take notice of them as a contempt and will examine them on information." at 530.

But the process of contempt is wholly different from the criminal process attached to the prosecution of a disorderly persons case. In the contempt process, it is the body before whom the alleged misconduct occurred which either controls or initiates the prosecution. And it is with full recognition of the availablity of another remedy that the absolute privilege from a criminal prosecution (other than dontempt) has been acknowledged.

Any interpretation of the disorderly conduct statute which would make it applicable to an attorney's oral argument and permits interference with the privileges and duties of an attorney, as manifested by the facts of this case, is obviously improper. Fortunately, as pointed out above, a fair reading of the statute hardly requires such a result.

The privileges of an attorney extend not merely to the content and manner of his expressions; they also include a privilege from arrest while in attendance at a court. 5(a)/ In Durst v. Tautges, Wilder & McDonald, 44 F. 2d 507 (7th Cir., 1930), the court dealt at length with this privilege of the attorney. It quoted Blackstone as follows:

> "Clerks, attorneys and all other persons attending the courts of justice (for attorneys, being officers of the courts, are always supposed to be there attending), are not liable to be arrested by the ordinary process of the court, but must be sued by bill (called usually a bill of privilege) as being personally present in court. Blackstone's Commentaries, 2 Cooley's 2d Ed. 288." at 509.

The court analyzed the privilege as not simply a personal privilege saying,

> "...it is also the privilege of the court, and is deemed necessary for the maintenance of its authority and in order to promote the due and efficient administration of justice." (Durst, supra., at 508-509).

The court was clear that the privilege extended to legislative as well as to judicial proceedings,

> "Hearings before arbitrators, legislative committees, commissioners in bankruptcy, and examiners and commissioners to take depositions have all been declared to be embraced within the scope of its application." (Durst, supra., at 509).

See also Edward Thompson's Case, 122 Mass. 428 (1877). Equally was the court clear that the arrests to which the privilege extended included both a criminal and a civil arrest. "If the word 'arrest' refers to arrest on a criminal warrant--and we are convinced it does--..." Durst v. Tautges, Wilder & McDonald, 44 F. 2d 507, 510 (7th Cir., 1930).

The arrest of Mr. Kinoy in the midst of a legal argument was in flagrant violation of this privilege.

Since in this case it was the arrest itself which really rendered the entire proceeding disorderly, and since it was the very arrest which

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5(a)/ See cases cited at 7 C.J.S., 821.

prevented Mt. Kinoy's return as requested by the chairman of the committee, the entire prosecution must fail. Obviously, if Mr. Kinoy had not been arrested--had he been returned to the committee as requested--there would have been no prosecution. Since the arrest itself was unlawful--and since it was this unlawful conduct which literally brought about the prosecution--the prosecution itself must fail.

The privileges which we have here referred to have emerged from the common law. Additionally they touch directly upon fundamental constitutional rights, under the First and Sixth Amendments. The vindication of these privileges is essential to the maintenance of our system of justice. The prosecution of Mr. Kinoy and his forcible arrest in the very midst of an oral argument must necessarily have a "chilling" effect (Dombrowski v. Pfister 380 U.S. 479 (1965) upon the bar as a whole unless promptly rectified.

As we have pointed out above, the maintenance of this prosecution requires that the plain language of the statute be ignored. We submit that certainly such a strained interpretation should not be adopted when its consequences so directly imperils the time-honored privileges of the lawyer and his significant role in the administration of our judicial system.

## Point III

THE USE OF THE CRIMINAL PROCESS OF DISORDERLY CONDUCT TO REGULATE THE CONDUCT OF AN ATTORNEY ENGAGED IN ACTUAL ARGUMENT BEFORE A CONGRESSIONAL COMMITTEE IS BEYOND THE JURISDICTION OF THIS COURT AND CONSTITUTES AN ATTEMPT UNLAWFULLY TO INTERFERE WITH THE POWER OF A CONGRESSIONAL COMMITTEE TO REGULATE ITS OWN PROCEEDINGS.

The inapplicability of the disorderly conduct statute seems clear on its face. The conflict between the application of the statute in this case and the privileges of an attorney is a further reason why the claimed offense is beyond the scope of the statute. But further, the effort to press that statute into use in respect to the conduct of a lawyer before a congressional committee is beyond the jurisdiction of this court and constitutes a gross interference with the legislative process and a violation of the most basic principles of separation of powers.

It should be noted that in Rex v. Skinner, supra, Lord Mansfield expressed not merely the substantive privilege of an attorney not to be prosecuted for crimes, but also a basic procedural and jurisdictional limitation. If, as he stated, contempt is the proper procedure, then its enforcement must be determined or at least initiated by the offended body.

Indeed, it is really quite unbelievable that a bailiff should have the power--independently of a determination by the presiding officer of a court or committee--to interrupt a lawyer's argument, physically remove him, and bring him before another judge to determine the propriety of his conduct constituting a part of an oral argument. Such a power of course threatens the functioning of lawyers in a hotly contested and possibly unpopular cause; more than that, it threatens a court's control of its own proceedings.

Courts and legislative bodies have zealously guarded their powers to regulate the conduct of attorneys before them. The power of contempt is considered to be essential to the maintenance of the integrity of the proceedings of the body in question.

We do not for a moment concede that Mr. Kinoy's conduct was contemptuous or that the House would have the power to proceed against him. It is sufficient at this time to emphasize that the issue is one of jurisdiction and that if there is any regulation required of the conduct of an attorney in respect to the content and tone of his argument, the power to initiate regulatic of the same vests in the court or legislative body before which the attorney makes his argument, and not some other court 6/ enforcing the criminal law independent of the body concerned.

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6/ We are not here concerned with the question of whether the legislature may use its own forum for trying a contempt, as in Anderson v. Dunn, 19 U.S. 204 (1821), or whether it must seek the aid of a court to adjudicate a question of contempt, as in United States v. Gojak, 384 U.S. 702 (1966). The point here is that even if the aid of a court is sought to punish for contempt such action by the court follows a first and formal determination by the legislative body that a contempt occurred and a subsequent formal application to the court that it render aid.

This of course explains why this case is unprecedented and why there does not appear to be a single case where alleged misconduct of counsel in the course of argument was punished as disorderly conduct, 7/ though there are innumerable cases where such misconduct was proceeded upon by contempt. See Gallagher v. Municipal Court, 192 P. 2d 905,31 Cal.2d 784 (1948), and the numerous cases cited therein.

The reason why matters relating to the conduct of counsel in oral argument always involve a first determination by the body before whom counsel appears is, of course, that the power to punish is also the power to regulate and intervene. Where a court of criminal jurisdiction without prior formal request undertakes to punish attorneys for their conduct in oral argument before another court or a congressional committee, the threat of interference becomes obvious.

Legislative hearings by nature deal with political and controversial issues. In fact, the theoretical basis for most legislative hearings is that Congress is gathering facts upon which to base legislation. Witnesses and lawyers frequently are contributing testimony or arguments which may be distasteful to particular persons. Often enough such persons are either on the executive or judicial branch of the government.

Suppose a witness before a congressional committee loudly denounces the John Birch Society and a law enforcement officer does not appreciate such denunciation. Is he empowered to whisk away the witness and lodge a charge of "loud and boisterous talking"? Or let us suppose the committee is investigating the conduct of the office of the U.S. Marshal, or possibly that of judicial tribunals. Is the committee to be at the mercy of the executive or the judicial branch of the government on the matter of such elementary questions as the conduct of counsel or witnesses?

The application of these problems to judicial tribunals is equally clear. Consider the case of Sheppard v. Maxwell, 384 U.S. 333 (1966), which incidentally included the forcible ejection of an attorney who "attempted to place some documents in the record" of the proceedings before the coroner (at 340). The court set aside the conviction because of the deluge of publicity and the failure of the court to exercise control over the same. The Supreme Court insisted that the trial court had the power to control these matters and was required to exercise that power. Significantly, the Court said:

> "The courts must take such steps by rule and regulation that will protect their processes from prejudicial outside interferences. Neither prosecutors, counsel for defense, the accused, witnesses, court staff nor enforcement officers coming under the jurisdiction of the court should be permitted to frustrate its function." at 363.

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7/ So strong is the limitation of the punitive power to the process of contempt that even in cases that involve conduct rather obviously unlawyerlike, e.g., lawyers drawing a bowie knife on a U.S. Marshal (Ex parte Terry, 128 U.S. 289 (1888), fist fighting in court (see State v. Buddress, 63 Wash. 26, 114 P. 879 (1911)), the device of contempt is used.

Lest it be thought that the jurisdictional conflict above referred to is an academic matter, we refer the court to the record in the case which establishes that there was in fact interference by the U.S. Marshals with the functioning of the Committee.

It was after the Marshals had removed Mr. Kinoy from the room that they sua sponte and with no formal direction from the Congress, the Committee, or the subcommittee, determined to charge him under the District of Columbia statute. They thus removed him from the building and handed him over to the metropolitan police, and made it impossible for him to return to the room when Mr. Pool, who obviously had some second thoughts on the matter, said "Bring the gentleman back." Thus the Committee's processes were indeed frustrated by the independent action of the Marshals.

The House has recognized that counsel has some role to play in its proceedings. Indeed, the nature of the issues which have characterized litigation relating to the Committee emphasizes that lawyers do in fact have a most significant task to protect their clients. 8/

However grudging has been the Committee's willingness to recognize the function of the lawyer--and it will be recalled that a claim of the right to cross-examine was at the root of Mr. Kinoy's argument--it is not prepared to exclude them. Perhaps the Committee realizes that the legal basis of its power to compel witnesses to appear would be further called into questio if lawyers were excluded.

It is understandable, therefore, that the chairman of the Committee, being somewhat sensitive to the various questions that have been raised as to its functioning, and perhaps after he realized the implications of what had transpired, sought to have Mr. Kinoy return. It is perhaps too much to expect that a Deputy U.S. Marshal would be responsible for determinations of the role of counsel, but this would be all the more reason why he should not interfere with the processes of the Committee absent appropriate and orderly request therefor by the Congress under its rules. Nor, for that matter, should this court undertake, by sustaining this prosecution, further to extend the interference with the Committee without formal request therefor.

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8/ Whatever may be the role of counsel before other congressional committees, counsel before this Committee performs an indispensable role. In the 21 years of HUAC's tenure it has cited for contempt more witnesses than all the other congressional investigating committees combined. When such contempt citations are reviewed judicially, the vigilance of counsel before the Committee may well determine his client's guilt or innocence. For example, his failure to object to the absence of a quorum (cf., Christoffel v. United States, 338 U.S. 84 (194 or lack of pertinency of questions (Watkins v. United States, 354 U.S. 178 (195 or lack of authority of the subcommittee to proceed to the particular subject matter (Gojak v. United States, 384 U.S. 702 (1966)), or the improper refusal by the subcommittee of the right to be heard in executive session (Yellin v. United States, 374 U.S. 109 (1963)), may foreclose an effective defense to the contempt charged. It is therefore clear why Mr. Kinoy's statements to the subcommittee were reasonably considered by him to be essential to the preservation of his client's legal rights.

Further evidence that the actions of the Marshals without formal request of the Congress interfered with the functioning of the Committee appears in the record of the House Un-American Activities Committee on the following day. The violent assault upon Mr. Kinoy--and it was at least that--caused all the other lawyers to refuse to attend the hearings. Upon the lawyers refusal, a large number of witnesses refused to testify. The Committee was compelled to recognize the validity of their refusal and the hearings as to some of the witnesses were postponed until November 15. Realistically, then, the precipitate action of the Marshals did in fact bring about a gross interference with the program of the Committee.

If this case had involved two tribunals of the same branch of government, the issues would be serious enough. But dealing here with the relationship between the executive and judicial branches of the government on the one hand and the legislative branch on the other, large issues of separation of powers necessarily come to the fore.

This is not a case where the legislature calls upon the judicial branch of the government to aid and assist in the performance of its legislative duties; in such cases, of course, the courts require compliance with judicial standards of due process and the whole panoply of protective devices which characterize our judicial system. Gojak v. United States, 384 U.S. 702 (1966). Nor is this a case involving the power of courts to protect the citizenry from the abuse of process or unconstitutional conduct of a committee of Congress. The power of the courts in such a case to enforce the Constitution and laws of the United States is clear. This is rather a case where a group of U.S. Marshal and a court of the District of Columbia are undertaking without any congressiona authority, to apply to a committee of Congress their own standards of how a lawyer should conduct himself before a committee. This action is especially vulnerable when the Committee has a rule respecting the conduct of attorneys (Rule VIII) supra, which includes a range of controls, presumably designed to meet different situations. The action of the Marshals and indeed of this court takes no account of these differences.

Any control of a lawyer's conduct in the midst of oral argument must necessarily start with a determination by the body before whom the lawyer is arguing that his conduct needs to be controlled. To ignore this basic proposition is to attack the ability of the affected body to control its own proceedings. No court has jurisdiction to assert itself in this area without a prior determination by the body concerned. In the context of relationship between the Legislative and Judicial branches of the Government these limitations of jurisdiction take on the added restrictions of the separation of powers

In England even the King or his attendants may not enter the House of Commons without the permission of the House--a permission sought throug the ceremony of the Black Rod (3 Encyclopedia Britannica 685 [1960 Ed.]). The marshals and this court are equally lacking in power to usurp the functioning of the congressional committee in determining the conduct of attorneys before it.

## Point IV

## THE PROSECUTION IS VOID BECAUSE OF FAILURE TO COMPLY WITH THE COMMITTEE'S RULES.

It is clear enough that the Committee made no formal request that Mr. Kinoy be arrested and that he be prosecuted. But even if there had been such a request by the chairman or any member of the Committee, the prosecution must fail because of failure to comply with the rules of the Committe

Rule VIII of the rules of the Committee provides:

> "Conduct of counsel. Counsel for a witness should conduct himself in a professional, ethical and proper manner. His failure to do so shall, upon a finding of the committee or subcommittee, before which the witness is appearing subject such counsel to disciplinary action, which may include, warning, censure, removal of counsel from the hearings, or a recommendation of contempt proceedings."

Thus any action relating to the disciplining of an attorney is subject to determination by a majority of the Committee. The record is clear that the majority of the Committee was neither called upon to act nor did it act.

The Supreme Court has recently dealt with the consequences of failure to comply with the Committee's rules which grant a specific power to the majority of the Committee. In Yellin v. United States, 374 U.S. 109 (196 the Court reversed a conviction of refusal to answer questions before the Committee because the Committee majority had not - as required by its rules - passed upon an application for an executive session.

In United States v. Gojack, 384 U.S. 702 (1966), the Court set aside a conviction because the majority of the Committee had not, as required by its rules, determined the subject matter of the inquiry.

The Committee has set up its own machinery for regulating the conduct of attorneys. If this proceeding be considered in any way as ancillary to the Committee's hearings, the failure to comply with the Committee's own wules is a decisive and jurisdictional omission.

## CONCLUSION

The defects in the judgment of conviction are apparent on the face of the record. The judgment of conviction should be arrested. Walls v. Guy, 4 F.2d 444, 55 App.D.C. 251 (1925). The information should be dismis

Respectively submitted,

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# APPENDIX

§ 22-1107. Unlawful assembly--Profane and indecent language.

It shall not be lawful for any person or persons within the District of Columbia to congregate and assemble in any street, avenue, alley, road, or highway, or in or around any public building or inclosure, ~~or~~ or any park or reservation, or at the entrance of any private building or inclosure, and engage in loud and boisterous talking or other disorderly conduct, or to insult or make rude or obscene gestures or comments or observations on persons passing by, or in their hearing, or to crowd, obstruct, or incommode, the free use of any such street, avenue, alley, road, highway, or any of the foot pavements thereof, or the free entrance into any public or private building or inclosure; it shall not be lawful for any person or persons to curse, swear, or make use of any profane language or indecent or obscene words, or engage in any disorderly conduct in any street, avenue, alley, road, highway, public park or inclosure, public building, church, or assembly room, or in any other public place, or in any place wherefrom the same may be heard in any street, avenue, alley, road, highway, public park or inclosure, or other building, or in any premises other than those where the offense was committed, under a penalty of not more than $250 or imprisonment for not more than ninety days, or both for each and every such offense. (July 29, 1892, 27 Stat. 323, ch. 320, § 6; July 8, 1898, 30 Stat. 723, ch. 638; June 29, 1953, 67 Stat. 97, ch. 159 § 210.)

# DISTRICT OF COLUMBIA
# COURT OF APPEALS

No. 4186

ARTHUR KINOY,

*Appellant,*

—v.—

DISTRICT OF COLUMBIA,

*Appellee.*

APPEAL FROM DISTRICT OF COLUMBIA COURT
OF GENERAL SESSIONS, CRIMINAL DIVISION

## BRIEF OF PRACTICING LAWYERS, LAW TEACHERS AND LAW DEANS, *AMICI CURIAE*

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# BRIEF OF PRACTICING LAWYERS, LAW TEACHERS AND LAW DEANS, *AMICI CURIAE*

We tender this brief *amici curiae* for the purpose of voicing our concern, as members of the legal profession, at the public danger involved in punishing a lawyer because of his vigorous performance of professional duty. We have read appellant's brief and agree with it. We believe that the judgment convicting him of disorderly conduct should be reversed, and a judgment of acquittal entered. But that belief, by itself, would not prompt us to offer this brief. It is the broader implications of the case that require us to speak.

The pertinent facts are simple and undisputed. As attorney for two prospective witnesses before a subcommittee of the House Committee on Un-American Activities, appellant brought an injunction suit to determine whether

HUAC's course of conduct—public investigation and "exposure" of persons advocating controversial causes (in this case, criticism of the Viet Nam war policy of the government)—violates the First Amendment. A three-judge Federal District Court in Washington is now considering whether it will entertain the action on the merits, or whether—contrary to the recent decision of the Seventh Circuit Court of Appeals in a case raising the same question (*Stamler* v. *Willis,* 35 U. S. L. Week 2272 (Nov. 22, 1966), decided November 10, 1966)—it will dismiss the case without trial.

For present purposes the eventual outcome of the injunction suit is unimportant. What is important is that the suit represents a serious effort to obtain judicial determination of a public issue of first magnitude—the extent to which and the procedure whereby the Constitution permits the Congress to influence or discredit private organizations or other instrumentalities of public opinion which, in our system, are part of the mechanism of popular control of government. The Supreme Court has explicitly and repeatedly recognized, at least since 1938, that private organizations do serve this purpose. *United States* v. *Carolene Products Co.,* 304 U. S. 144, 152, footnote 4 (1938); *N. A. A. C. P.* v. *Alabama,* 357 U. S. 449 (1958) and cases there cited.

Appellant appeared before the HUAC subcommittee on August 17, 1966, two days after the injunction suit was begun, as attorney for the same two prospective witnesses who were and are plaintiffs in the injunction suit. Before the subcommittee he and his law partner presented certain objections to the procedure. The subcommittee did not question appellant's right to make these objections but overruled them on the merits. Appellant then tried to make sure that his clients' position, as well as that of the subcommittee, was clear on the record. Certain deputy marshals formed the opinion that his oral expressions were so persistent and so loud as to constitute criminal conduct. No member of the subcommittee, or of Congress, has agreed with their opinion in this regard, so far as the record shows; nor does the accusation against appellant rest on anything other than oral expression.* On complaint of the deputy marshals, appellant has been convicted and fined by the Court of General Sessions.

## Discussion

We live in a time of social ferment. Legal premises once thought to be firmly established are being re-examined and re-evaluated. We are engaged in a number of great debates on such questions as the extent to which the state should mitigate disadvantages resulting from skin color or poverty; the extent to which freedom of the press should be permitted to impair the fairness of trials; the extent to which individual privacy should give way to the zeal of police and prosecutor in the detection and proof of crime; and the extent to which associational privacy and freedom of political organization should be subordinated to the investigative power of governmental organs and agencies, including Congress—the issue raised by appellant's injunction suit, mentioned above. In these areas and others, the soundness of established doctrine is being challenged. Some changes have been effected already, and others may ensue from the ongoing debate.

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* We do not overlook the trial court's ruling that appellant's reaction to his (possibly accidental) strangulation by the arresting officer was itself disorderly conduct. The ruling is so clearly erroneous as to require no comment here. See Point IV.C. of appellant's brief.

Social change never comes without controversy. It is the glory of our system that social controversy is recognized as a wholesome thing, and is channeled into the legislatures and courts—not left to the explosive and destructive processes of self-help. The broad issue in the present case is the extent to which lawyers can continue to participate vigorously in the reasoned disposition of these controversies by legislatures and courts.

(1) Even if this case stood by itself, we would view appellant's criminal conviction with grave concern. It means that participation as an attorney in deeply controversial problems is an extra-hazardous activity. If a lawyer can be arrested and prosecuted by a peace officer,* without at least the direction or express and formal permission of the tribunal before which he is arguing, on a charge based solely on the manner in which he speaks in the performance of his professional duties, the participation by lawyers in our great debates may be smothered.

The Supreme Court has unequivocally proclaimed the value of their participation, declaring that litigation—which calls for the professional services of lawyers—is, in some contexts, more than "a technique of resolving private differences; it is * * * a form of political expression."

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* And presumably by any bystander, it being remembered that private citizens are privileged to arrest and initiate prosecution for breach of the peace as well as felony (Restatement of Torts, Sec. 119(c)). The decision below seems to open the way to this possibility. See footnote 1 of the trial court's written opinion: "D. C. Code §22-1107 incorporates the common law concept of breach of the peace * * *."

*N. A. A. C. P.* v. *Button,* 371 U. S. 415, 429 (1963). And the Court took pains to point out that its decision extends beyond the field of racial discrimination to the whole range of the First Amendment. *Id.* at pp. 444-445. Appellant's efforts, for which he has suffered prosecution and conviction, were indisputably directed to the assertion of his clients' claims to First Amendment protection. We have already noted the stern alternative that faces us if we close the channels of reasoned dialogue (where the contribution of the legal profession is so vital) and thereby leave only the processes of self-help available for resolving the great public issues of the day.

(2) There is reason to believe, moreover, that this case does not stand alone. Press reports indicate that the present case may reflect, and provide impetus to, a general trend toward more intensive harassment of lawyers who represent clients identified with controversial positions. We have regretfully become accustomed to accept the hard fact that such lawyers must often expose themselves to social ostracism and private boycott. Beyond this, there have been some official efforts to curb their activities through general legislation, such as the Virginia statute invalidated in the *Button* case. But efforts to sterilize the bar now seem to be taking the form of criminal prosecutions and criminal contempt proceedings against individual practitioners—an approach that is more difficult to deal with because each proceeding requires a separate and burdensome defense.

Appellant's conviction, on August 19, was given wide newspaper publicity. On September 13, Philip J. Hirschkop of Alexandria, Virginia, attorney for a Negro whose death sentence for rape had been reversed and a new trial ordered, was convicted of criminal contempt and sentenced to a $50 fine and five days in jail, the jail sentence being suspended. He was charged with failure to appear in the state court at Lynchburg on the day scheduled for retrial of the rape charge. *Washington Post,* September 14, 1966, p. B-3. According to the uncontested evidence at the contempt hearing, the rape trial was set for 9:30 a.m. When it became apparent, shortly before then, that the defendant would be unable to obtain from the official stenographer a promised transcript of earlier proceedings (for use in the new trial), his attorneys decided to petition for removal of the case to the Federal District Court at Lynchburg, on civil rights grounds. Mr. Hirschkop's associate counsel, Ruth Harvey, had been instructed by him to file the removal petition when the Federal Clerk's office opened at 9 a.m., and then proceed at once to the state court to advise it of the filing of the removal petition, which operates as a stay of state court proceedings. The Federal Clerk's office opened late that morning because the deputy clerk did not arrive until about 9:20. Miss Harvey therefore reached the state court about twenty minutes late. Mr. Hirschkop was engaged in a proceeding in a different court at that time (Tr. pp. 9, 16, 23-25, 28, 32-34, 44-51).

On November 3, Jack Brian of Philadelphia was arrested and charged with disorderly conduct on the ground that he had been unduly persistent in protesting the action of a justice of the peace in fixing $1000 bail for four Swarthmore College students accused of displaying obscene material. The students were discharged the following day in Delaware County Court, but Mr. Brian's disorderly conduct case was set down for trial. *The Evening Bulletin* (Philadelphia), November 4, 1966, p. 8.

On November 16, Donald A. Jelinek of the New York bar, staff counsel for the Lawyers Constitutional Defense Committee of the American Civil Liberties Union, was arrested and charged with practicing law in Alabama without a license. His arrest occurred in the course of an appellate trial (involving Federal issues) in Marengo County Circuit Court in which Mr. Jelinek was representing the defendant-appellant. *New York Times,* Nov. 17, 1966, p. 34. The fact that Mr. Jelinek was not a member of the Alabama bar was known to the court before the appellate trial began.

Other cases could be cited. But these suffice to indicate that open season on lawyers may have been declared. We express no present opinion on the merits of the Hirschkop, Brian and Jelinek cases. Even assuming, *arguendo,* that these lawyers are rightly subject to discipline, the resort to punitive judicial process seems disproportionate to the infractions charged—especially since the civil disciplinary procedures that are ordinarily used in such situations were available. And because appellant's conviction can reasonably be expected to encourage somewhat similar harassment of other lawyers, these three cases, together with appellant's, suggest the beginning of a general trend. A halt should be called now, before the trend accelerates.

As lawyers who may wish to take part in the great debates, we have a personal interest—and, we think, an interest shared by thousands of our brothers at the bar—in any threat of punishment for performance of our recognized professional duties. And many of us, as law teachers, have an obligation to let our students know whether the high standards of independent devotion to the law and its constructive development, that we have received from our fathers, will be passed on intact to our sons. We are also obligated to resist any debasement of that heritage.

Appellant's conviction should be reversed, and a judgment of acquittal directed.

Respectfully submitted,

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# BRIEF FOR APPELLANT

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## DISTRICT OF COLUMBIA COURT OF APPEALS

No. 4186

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Appellee.

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APPEAL FROM DISTRICT OF COLUMBIA COURT
OF GENERAL SESSIONS, CRIMINAL DIVISION

---

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## STATEMENT OF ERRORS CLAIMED

I. Appellant's conviction must be reversed because no violation of D.C. Code Sec. 22-1107 was charged or proved -- and that is the only statute claimed to have been violated.

II. Appellant's conviction violates the due process clause of the Fifth Amendment to the United States Constitution because:

1) Either he was convicted of an offense of which he was not charged, or

2) The statute under which he was tried was by "interpretation" extended to encompass an area clearly beyond its scope.

III. As applied to appellant, D.C. Code Sec. 22-1107 is unconstitutional as a vague and overbroad regulation of free speech and advocacy, in violation of the First Amendment to the United States Constitution.

IV. Even if Sec. 22-1107 is construed to prohibit disorderly conduct generally, and even if it may be constitutionally applied to the instant case, there is insufficient evidence to support appellant's conviction.

V. Appellant was properly acting as an attorney and being so engaged is entitled to the privileges of an attorney, which include the privilege from ordinary criminal prosecution for matters done or said in the midst of legal argument.

VI. Appellant's prosecution invades the functions of Congress.

VII. Appellant's conviction should be reversed because his prosecution violates Rule VIII of the House Committee on Un-American Activities.

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## STATEMENT OF THE CASE

This is an appeal from a criminal conviction of disorderly conduct. As will shortly appear, the statutory basis for the charge is unclear. The appellant, defendant below, is Arthur Kinoy, an attorney and Professor of Law at the Rutgers University Law School (Tr. 205). His prosecution arises out of argument which he made on behalf of a client, Walter Teague, during an investigative hearing before a subcommittee of the House Committee on Un-American Activities (HUAC) in the Cannon Building, August 17, 1966.

The information filed against appellant consisted of a printed form, much of it stricken, which tracked some of the statutory language of D.C. Code § 22-1107 and charged that appellant

> in a public place, to wit: Cannon Building did then and there engage in loud and boisterous talking and other disorderly conduct contrary to and in violation of an Act of Congress police regulation in such case made and provided and constituting a law of the District of Columbia. (R.) [1]

Appellant pleaded not guilty (Tr. 3) and was tried without a jury, August 18-19, 1966. His motion for judgment of acquittal made at the close of the prosecution's case (Tr. 113) was denied (Tr. 124). It was renewed at the close of defense testimony (Tr. 224) and argued together with defense summation, on the various grounds urged upon this appeal (Tr. 224-241, 251-253). Defense counsel's argument was predicated upon the theory that appellant was charged under § 22-1107 (see Tr. 224); the prosecutor expressly agreed that that section was the sole basis of the charge (Tr. 243-244).

The court impliedly overruled the renewed motion for judgment of acquittal by returning its finding that the defendant was guilty (Tr. 254) in an oral opinion (Tr. 254-258) which did not specify the offense found, except insofar as this might be inferred from general terms such as "disorderly conduct" and "loud and boisterous" (Tr. 257). Motion for judgment N.O.V. or alternatively for a new trial was denied (Tr. 261). A written motion for arrest of judgment (R.) was filed and supplemented by an amendment and specification of the motion (R.). Appellant's brief in support (R.) was countered by a brief in opposition (R.) in which the prosecution, for the first time, suggested that appellant's conviction might be sustained as for a common-law offense alternatively to violation of § 22-1107 (R.). After oral argument, the court rendered its opinion (R.) denying arrest of judgment. Although this opinion nowhere plainly states the offense of which appellant is held guilty, it intimates that his guilt is laid alternatively on D.C. Code §§ 22-1107 and 22-3111 (R. [op.1] n. 1). The latter section had never been mentioned in connection with this litigation at any time prior to the opinion denying appellant's post-trial motion.

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[1] The designation "R.)" as used throughout refers to the official Record before this Court, of which the particular document is a part.

## Statement of Facts

On August 15, 1966, appellant Kinoy as one of a group of counsel on behalf of the American Civil Liberties Union, filed a complaint in the United States District Court for the District of Columbia in the case entitled Krebs v. Ashbrook, docket #2157-66 (Tr. 207). The complaint sought the appointment of a three-judge District Court to hear a request for an injunction restraining the enforcement of the Act of Congress establishing the Committee. The complaint alleged in essence that the acts establishing HUAC were unconstitutional on their face and that HUAC's practices over the years of its operation further established its unconstitutionality. Injunctive relief was sought because of the chilling effect of HUAC and its conduct on the exercise of First Amendment rights (Tr. 207).[2/]

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[2/] The complaint was basically the same as that brought by the appellant as co-counsel with Albert E. Jenner, Jr. in Stamler v. Willis in the United States District Court for the Northern District of Illinois, [fn. continued on next page]

On the afternoon of August 15, District Judge Corcoran, sitting as a single judge, entered an order certifying the necessity for convening a three-judge statutory court (Tr. 208). The District Judge also issued a temporary restraining order enjoining the Committee hearings pending the convening of the statutory court. While the temporary restraining order was vacated the next morning, the three-judge District Court was duly convened by the Chief Judge of the Circuit and is presently sitting as a statutory court considering arguments submitted by the parties in response to a *sua sponte* inquiry as to whether the request for injunctive relief should continue to be heard by the statutory court or be remanded to a single judge.

On August 17, two days after the filing of the complaint aforesaid, and the day before a further scheduled hearing by the three-judge court, defendant was (for the first time since this set of HUAC hearings had begun) before the Committee, representing his clients, viz., Allen Krebs and Walter Teague, both of whom were subpoenaed as witnesses (Tr. 207).

There ensued a series of circumstances as to which there appear to be two versions: the one which appears in the transcript of the official record of HUAC, which version was fully corroborated by the defense witnesses, and the other a quite contradictory description by a number of United States Deputy Marshals.

In its oral opinion adjudging appellant guilty and its written opinion denying arrest of judgment, the court below made conclusory

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[Continuation of fn. 2 from previous page] Eastern Division. In reversing a dismissal of the complaint by the District Court, the Court of Appeals for the Seventh Circuit, 35 U.S.L. Week 2272, ___ F. 2d ___ (Nov. 10, 1966), stated that the allegations of the complaint "raise a substantial constitutional question not foreclosed by the Supreme Court in *Barenblatt v. United States*, 360 U.S. 109 (1959)." The court emphasized that the complaints alleged that the Committee's "continued conduct" gave an "unconstitutional meaning" to the statute which made for a case quite different from *Barenblatt*.

The underlying legal basis for these injunctive proceedings against the Committee is found in *Dombrowski v. Pfister*, 380 U.S. 479 (1965), which appellant personally and successfully argued before the Supreme Court.

findings of fact which indicate it credited entirely one description of the events, i.e., that contained in the testimony of the United States Deputy Marshals concerning events before the HUAC subcommittee (Tr.254-255, 257-258; R. [op. 2-3]). It reached these conclusions without explanation or detailed findings of subsidiary facts, despite the striking circumstance that the marshals' testimony was largely contradicted by the official stenographic transcript of the subcommittee hearing, which supported the defense witnesses' general version of the episode. Further, the court's recitation omits material defense testimony that was uncontroverted, and fails to relate any of its factual conclusions to the elements of the offense of which appellant was convicted. Nevertheless, for purposes of appellant's principal submissions on this appeal, we first set out the evidence in the light most favorable to the prosecution, consisting only of the marshals' testimony and such defense evidence as was wholly uncontradicted. Then, we invite this Court's attention to the quite different state of facts portrayed by the HUAC transcript and defense testimony.

A. The facts according to the prosecution witnesses. At trial the prosecution rested its case on the testimony of four United States Deputy Marshals, Bird (Tr. 7), Hockman (Tr. 390), Vandegrift (Tr. 81), and Gardner (Tr. 91). A fifth deputy, Rowe, was tendered to and cross-examined by the defense (Tr. 105) and testified against appellant. No member of the subcommittee before whom appellant's argument had been made appeared for the prosecution.[3/]

The deputy marshals' version is as follows:

A witness was on the stand (Tr. 8, 84) who, in the jargon of HUAC hearings, may conveniently be described as a "friendly" witness,

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[3/] Trial below began on August 18, the day following the alleged offense. On the afternoon of August 17, defense counsel applied to the court for subpoenas for subcommittee members. After a conference in which Government counsel participated, the court refused to sign subpoenas "until such time as there was an opportunity for the matter to be heard in open court the next day" (Tr. 263). On the morning of the 18th the applications were not renewed because the case was already at trial. (Tr. 263-264).

i.e., one sympathetic to the subcommittee (Tr. 131, 208). When the witness mentioned Walter Teague's name, Mr. Kunstler rose and approached the committee bench, where he made several requests of the subcommittee on behalf of Teague, including requests that testimony referring to Teague be taken in executive session and that cross-examination of the witness by attorneys for Teague be permitted (Tr. 84, 132-133, 154, 188, 196-197, 203, 208-209). At this time, "several" of the lawyers representing witnesses approached the bench (Tr. 8, 41, 48, 64, 84, 106), including appellant Kinoy (Tr. 8, 41, 55).

The lawyers were permitted by the subcommittee to approach the bench (Tr. 41). They came forward to the spot from which attorneys had frequently before addressed the subcommittee on objections and motions (Tr. 16-17, 86, 133, 152), the spot to which Chaimman Pool had directed that attorneys advance in making objections (Tr. 16-18, 132-133, 152)[4/]

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[4/] See, for example, Mr. Pool's invitation to an attorney:

> "Mr. Pemberton. Mr. Chairman, I request leave to make a motion.
> "Mr. Pool. Come up here, if you are an attorney, and want to ask something. Come around here."
>
> Committee Print of Investigative Hearing before the Committee On Un-American Activities, House of Representatives, Eighty-Ninth Congress, August 16-19, 1966, at 920.

This point deserves emphasis. Rule VII(B) of the House Committee on Un-American Activities purports to limit the role of counsel for a witness to "advising said witness as to his legal rights" and provides expressly that "Counsel shall not be permitted to engage in oral argument with the Committee, but shall confine his activity to the area of legal advice to his client." But despite the categorical tenor of this rule, and despite the prominence which its supposed categorical inhibition was given in the opinion of the court below (R. [op.1-4]), the testimony is plain and uncontroverted that "This happened many times [during the August 16-17 hearing], that attorneys had risen and gone up and had a colloquy at the bench" (Tr. 86) and that, in fact, the marshals "heard him [Chairman Pool] on occasion say [to the attorneys], 'Come forward'" (Tr. 17-18). Specifically, Mr. Kunstler and Mr. Gutman (counsel for other witnesses, see Tr. 151), had both approached the bench on August 16 to present motions, Mr. Kunstler's being similar to that he made on August 17 (Tr. 133, 152). Mr. Gutman "on at least two occasions . . . had made objections during the course of a proceeding in the usual manner. Congressman Pool had overruled them. Congressman Ashford [sic] [Ashbrook] on one occasion and on another occasion -- I don't think it was Ashford [sic], but it was one of the other members of [fn. continued on next page]

Following Mr. Kunstler's requests for an executive session and an opportunity to cross-examine, "There was quite a discussion between these . . . lawyers who approached the bench and Congressman Pool" (Tr. 8; see Tr. 19-20, 41, 82). "[I]t was [the appellant, Mr. Kinoy] . . . who was engaged in the most active conversation with Mr. Pool" (Tr. 8). None of the marshals was able to recall the substance of this conversation (Tr. 20, 61, 85), but all agreed that it was a legal discussion relating to the pending requests (Tr. 20-21, 24, 55-56, 85-86, 107; see also Tr. 136-139, 204), that terms such as "cross-examination" were used (Tr. 21), and that Mr. Kinoy's remarks were a continuation of the legal argument (Tr. 22). "This conversation at times got rather loud and, after Mr. Pool on many occasions had overruled [Kinoy's] . . . objections and advised him to sit down, [two deputy marshals, Bird and Hockman] . . . moved from [their] . . . position.[5] and walked to the rear of Mr. Kinoy and [Mr. Kunstler]" (Tr. 8).[6] Deputy Bird "approached Mr. Kinoy and touched him rather

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[Continuation of fn. 4 from previous page] the Committee -- after Congressman Pool said that the motion was denied, addressed himself to me [Gutman] inquiring further or making an observation supporting the ruling of the Chair. On one of the other occasions the ruling of the Chairman was actually changed as a result of the colloquy with Congressman Ashford [sic]" (Tr. 153-154, emphasis added).

An inspection of the HUAC Transcript for the first two days (August 16, 17, 1966) confirms this and also shows that not only were numerous motions and objections made and heard (Id., 920-926, 947, 955-958), but on at least two occasions prior to the arrest of Mr. Kinoy, other counsel engaged in colloquy long after a ruling on the motion (Id., 955-958).

[5] The marshals had previously been sitting in front of the subcommittee, facing the attorneys and spectators (Tr. 8, 11-12, 19-20, 41, 84). Bird and Hockman each testified that at some point in the colloquy they turned to face the bench (Tr. 21-22, 62-63) and thus, apparently, were able to say that Chairman Pool's directions to be seated were directed at appellant (see Tr. 25).

[6] Deputy Bird testified that no one ordered the marshals to move up behind Mr. Kinoy; that Chairman Pool did not call them over (Tr. 23). However, Deputy Hockman testified that Chairman Pool ordered Mr. Kinoy removed "several times" before the marshals arose (Tr. 46; see Tr. 42-44). This inherently incredible testimony was contradicted by Deputy Vandegrift and is belied by the HUAC transcript, set forth in text below, which shows that Chairman Pool's first and only order to remove Mr. Kinoy was given after a deputy had already laid hands on him.

lightly but with enough pressure to let him know [Bird] . . . was there and asked him to be seated" (Tr. 9; see Tr. 28, 30, 42, 83). Mr. Kinoy "paid no heed to [Bird]. . . and turned away from [Bird] . . . and made a retort" (Tr. 9).[7/] Mr. Kunstler then "grabbed [Bird] . . . by [the] ... left arm [later amended by Deputy Bird to: "didn't grab . . . but placed . . . hands on [Bird]" (Tr. 30)], and told [Bird] . . . not to touch him because he was a lawyer" (Tr. 9; see Tr. 30, 42, 64-65). "Mr. Pool again directed Mr. Kinoy to be removed." At that point Deputy Bird started removing Mr. Kinoy from the hearing room. He "placed [his] . . . hands on Mr. Kinoy taking him by the arm and by the seat of his pants [later amended by Deputy Bird to "back of the belt", (Tr. 32)] and attempted to eject him from the hearing room (Testimony of Deputy Marshal Bird, Tr. 9; see Tr. 29-34).

Appelant Kinoy's legal argument prior to his seizure by Deputy Bird was described by the marshals as "very loud" (Tr. 10; see Tr. 9, 24, 41, 42, 48, 52-56, 82, 203), "Loud and boisterous, could be heard all over the committee room" (Tr. 41; see Tr. 53), "hollering loudly and boisterously in a forangue [sic] with Congressman Pool" (Tr. 42; see Tr. 54). The deputy (Hockman) who testified that appellant could be heard all over the committee room (and who was standing close behind appellant, Tr. 53), agreed that Chairman Pool also could be heard all over the room (Tr. 55). Deputy Gardner, stationed at the rear of the room at some point during the colloquy, could hear Chairman Pool clearly, and could hear appellant, although not very clearly (Tr. 101-102). It may be noted that there were microphones on the bench from which Chairman Pool spoke (Tr. 61-62, 135-136), but that appellant had no microphone (Tr. 135). The hearing room was estimated as 160 feet by 100 feet (Tr. 42) and was "well-filled" with people (Tr. 61), "At least, three hundred" (ibid.). During the colloquy "There was voices all over the room . . . . From spectators" (Tr. 58). "There was quite a bit of movement about of the

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[7/] Deputy Bird testified that he did not know what the "retort" was (Tr. 9). The HUAC transcript shows that it was: "...don't touch a lawyer. Mr. Chairman ..." (set forth in text below; see also Tr. 222).

attorneys and the reporters and so on" (Tr. 85), a "commotion in the room" (ibid.). "Many people were talking at one time" (Tr. 106). Thus the marshals corroborated the testimony of defense witnesses that the room in which appellant raised his voice was "quite noisy" (Tr. 142; see Tr. 137, 143, 149). As the scene was summarized by the Washington Post reporter, Harwood, testifying for the defense:

> The scene was, at that moment, disorderly. Mr. Pool was gavelling. It seemed to me everybody was talking all at once. . . .
>
> Mr. Kinoy's voice was very loud. But everyone was shouting -- I mean, the Chairman was shouting . . . .
>
> . . . they were all shouting. . . . (Tr. 202-203).

The deputies testified variously as to Chairman Pool's overruling Mr. Kinoy's objection (Tr. 8, 21, 41). They testified that he directed Mr. Kinoy to sit down "on many occasions" (Tr. 8, 21), "several" occasions (Tr. 21; see Tr. 44), "several more times" (Tr. 41), "on several occasions . . . more than two . . . a half dozen or more" (Tr. 86-87) (see generally Tr. 9, 22, 25, 30, 41, 82-83, 85-89), and that Mr. Kinoy "paid no heed to Mr. Pool's rulings and became even louder and over Mr. Pool's gavel tried to be heard" (Tr. 9; see Tr. 22, 26). Deputy Bird believed, although he was not sure, that Chairman Pool twice ordered Mr. Kinoy removed by the marshals (Tr. 32; see Tr. 9, 29-30); Deputy Hockman recalled that the chairman had ordered Mr. Kinoy's removal three or more times before the marshals arose (Tr. 63; see Tr. 42, 44, 46-48); Deputy Vandegrift, after some indecision (Tr. 82-83), concluded however that the marshals were in motion and approaching Mr. Kinoy before the Chairman told them to remove him (Tr. 87-90). See note 6 supra.

After Deputy Bird seized Mr. Kinoy by the arm and "back of the belt," Mr. Kinoy "began violently to resist this objection [sic. ejection]." (Tr. 10; see Tr. 43). "[A]ll the way out Mr. Kinoy was objecting physically and vocally to . . . his ejection from the hearing room" (Tr. 11). Specifically, he "spoke in an even louder voice" (Tr. 10; see Tr. 34, 140), said "'You can't do this to me. I am a lawyer.' This type of thing" (Tr. 33; see Tr. 34, 190, 200). He "tried to flail his arms and at this point the other deputy [Hockman] who was on the other side, also took hold of Mr. Kinoy and it was then that [the marshals] . . . started out of the hearing room with him" (Tr. 10). Mr. Kinoy resisted [Hockman's] . . . right arm on his right arm" (Tr. 66; see Tr. 67, 70-71) and Hockman "immediately applied the chest-and-shoulder bar" (Tr. 74), which is Deputy Hockman's euphemism for gripping Mr. Kinoy by the neck from behind (see Tr. 71-81). At this time Mr. Kinoy was "Flailing, kicking, hollering" (Tr. 66; see Tr. 43, 66-70, 76-77), "swinging his arms," "kicking or swinging his feet" (Tr. 83; see Tr. 92), and he kicked Deputy Hockman in the legs (Tr. 71, 78-79) (see generally Tr. 34, 107), all the while he was being carried out by three deputy marshals (Tr. 10, 13, 33, 36, 93), all holding on to him (Tr. 10, 43, 65-81, 83, 94-97, 107-112, 140, 147, 159, 185, 190, 203-204, 215-217), giving him the bum's rush (Tr. 35) while Deputy Hockman maintained his "chest-and-shoulder bar" down three floors in an elevator to a police van in the street (Tr. 75). It should be noted that Mr. Kinoy is described as a "small man," "five foot five or six," "a hundred twenty-five, a hundred thirty" pounds (Tr. 31). Deputy Bird is 5'11", 175 pounds (Tr. 30-31), Deputy Hockman a 6'1" ex-wrestler (Tr. 72, 74). Dimensions of the other marshals do not appear, but the court below had no difficulty in assuming that they were heavier and bigger than Mr. Kinoy (Tr. 37). At the time of applying his "chest-and-shoulder bar," Deputy Hockman in his own view arrested Mr. Kinoy (Tr. 76), and "a little time after [he] . . . applied the . . . chest-and-shoulder bar," according to the Deputy's testimony, he told Mr. Kinoy that Kinoy was under arrest for disorderly conduct (Tr. 76-77; see Tr. 43).

The manner in which Mr. Kinoy was handled by the marshals during his removal from the hearing room is dramatically portrayed in photographs from the front pages of the metropolitan newspapers, introduced as Exhibits 1, 2 and 3. There are attached hereto copies of Exhibit 3.

### B. The facts according to the HUAC transcript and the defense witnesses.

In sharp and striking contrast to the narrations of the facts by the deputy marshals stand the facts established by the transcript of the hearing and detailed without contradiction by the witnesses for the defense.

The stenographic transcript of the subcommittee hearing was offered in evidence by the defense (Tr. 168-169) and received (Tr. 171-172, 175; Def. Ex. #4) over objection of the prosecution. The transcript describes the brief episode forming the basis of the proceeding as follows:

> Mr. Kinoy: Mr. Chairman, I would like to be heard on that motion, and I also am an attorney for Mr. Teague. Do I understand that it is the ruling of this committee that the fundamental right of cross-examination is not to be accorded to witnesses who are called before this committee when the committee is attempting to defame?
>
> Mr. Pool: You are arguing the question.
>
> Mr. Kinoy: Of course lawyers always argue questions, Mr. Chairman.
>
> Mr. Ashbrook: You didn't argue the question; you made a misinterpretation of fact when you said we are endeavoring to defame something.
>
> He is totally out of order, Mr. Chairman. Such is not the case.
>
> Mr. Kinoy: Mr. Chairman, that question will be settled in Federal Court whether you are attempting to defame witnesses.
>
> Mr. Ashbrook: You made it as a statement of fact, and as a lawyer you know you are absolutely wrong. You are out of place.
>
> Mr. Pool: The objection is overruled.
>
> Mr. Kinoy: May the record show we take a strenuous objection to your ruling.
>
> Mr. Pool: Now sit down. Go over there and sit down. You have made your objection. You are not going to disrupt this hearing any further.
>
> Mr. Kunstler: Mr. Chairman, you don't have to deal discourteously to an attorney in front of you. That is wholly un-American.
>
> Mr. Pool: I will deal any way I want under the rules in this hearing. I have just told him to be quiet and I ask you to sit down now.
>
> Mr. Kinoy: Mr. Chairman, let the record show -- don't touch a lawyer. Mr. Chairman --
>
> Mr. Pool: Remove the lawyer.
>
> Mr. Kinoy: Mr. Chairman, I will not be taken from this courtroom. I am an attorney-at-law and I have the right to be heard.

At the point where Mr. Kinoy stated "don't touch a lawyer" he had been touched by Deputy Marshal Bird (Tr. 9; see Tr. 28, 30, 42, 83) who was removing him in the manner indicated above.

Defense witnesses in addition to appellant (Tr. 205) consisted of three attorneys present at the hearing: Kunstler (Tr. 127), Gutman (Tr. 151), and Pemberton (Tr. 187), and a Washington Post reporter, Harwood (Tr. 202).

The testimony of the defense witnesses accorded for the most part with the events reflected by this transcript, so far as the transcript went. Several aspects of their description of the tone and atmosphere of the proceeding, however, deserve notice.

They testified that appellant approached the bench to offer a constitutional argument in support of Mr. Kunstler's application for leave to question the subcommittee witness (Tr. 134-135, 146, 155-156, 197, 203-209). After a subcommittee member moved that Mr. Kunstler's application be overruled, appellant asked if he might be heard on the point and Chairman Pool nodded (Tr. 189; see Tr. 212). Thereafter the subcommittee members listened intently to appellant (Tr. 136). This initial willingness of the subcommittee to hear appellant was not denied by any witness for the prosecution, and indeed it was corroborated by the testimony of Deputy Hockman that although "From the beginning [appellant] . . . was loud" (Tr. 56), "It was a legal motion. . . and no one disturbed anyone at that point" (Tr. 55).

On the matter of sound volume, the defense witnesses agreed with the marshals that appellant's voice was very loud (Tr. 135, 183-184, 196, 203-204). But his level of voice was no different than that of the other attorneys who had addressed the subcommittee from his spot before the bench (Tr. 156, 177-178, 184), and no louder than was required in order to have his argument heard by the Committee in a large, noisy room (Tr. 142, 191-192). During appellant's colloquy with Representative Ashbrook, each was leaning forward to hear the other (Tr. 143) "because of the difficulty in being heard in that room" (Tr. 142). Appellant testified that his reason for arguing to the subcommittee was that "there was a legal problem which Mr. Kunstler had not raised in his presentation, which [appellant] . . . felt was very important from the point of view of protecting the record to defend this particular client and, also, to prepare the necessary kind of record which is required in constitutional litigation" (Tr. 209). He had already testified about the Krebs v. Ashbrook proceeding (Tr. 207), and explained that experiences gained in the Dombrowski case, 380 U.S. 479 (1965), had emphasized the special importance of making the kind of record necessary to sustain this type of litigation (Tr. 209).[8] He pointed out that to invoke the discretion allowed a federal district court by that decision, it was necessary to make a clear record that the subcommittee's practices effected a denial of the constitutional rights of his client: that is, in terms of appellant's specific constitutional contention, a record demonstrating that, although the process of the hearing was "adversary" in the sense that it was directed at Walter Teague and designed to defame him, Teague would be denied the right of cross-examination (Tr. 209-215, 218-221).

It will be recalled that the very basis of the litigation brought by appellant against the Committee is a showing that the continuous conduct of the Committee renders its mandate unconstitutional. Denial of the right of cross-examination is a vital aspect of this continuous conduct.

Appellant testified to his limited purpose in remaining on his feet after he was overruled:

> Now, I, at that point, wanted to do one thing. I wanted to say, "Let the record show that our legal argument has been cut off." I started to say, I believe, "Let the record show." At that point I felt somebody go on my hips and I was extremely upset. Nothing like that has ever happened to me. I've never been touched in a courtroom, and I turned away and I think I said, "Don't touch me. I'm a lawyer."
>
> . . . .
>
> . . . A judge has never objected to my saying, when I'm overruled or cut off, "Let the record show

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[8] Judge Greene's queries (Tr. 209) suggested that he did not seem fully to appreciate the basis of the Krebs v. Ashbrook litigation or the fact that the "record" was that of the practices of the Committee. This of course was recognized by the Seventh Circuit in its opinion in Stamler v. Willis, supra, n.2.

> that the foregoing occurred" -- period. The judge says, "The record will so show." And that's that, and that is what I would have done in this situation.
>
> I had no chance to do anything else, because the next thing that happens to me is: I am grabbed; I am yanked off my feet . . . . (Tr. 215).
>
> I have never in my life disobeyed a direction of a Court, a hearing, a Congressional committee. I've been before Congressional committees many times; before the Congress during all last year through the Election Committee on a very important contested election case with difficult issues and intense situations; southern courtrooms with difficult issues and intense situations, and I have never once not obeyed a direction of a court, as I would have done here. I did not have the slightest intention of not obeying this direction if I had been permitted to do so (Tr. 219).

As for his conduct after he was seized, appellant testified that he was caught by the neck and choking (Tr. 216), that if he flailed or kicked it was that he "was trying to get a little air" (Tr. 217). Defense witnesses corroborated his testimony that he was strangling in Deputy Hockman's "chest-and-shoulder bar" (Tr. 185, 190, 200) and, indeed, Deputy Hockman conceded that his arm was around appellant's neck during at least a short period (Tr. 73-74, 80-81): in the "chest-and-shoulder bar" "Someone resisting can slide down, especially a short person" (Tr. 72). The photograph annexed hereto makes it quite clear that defendant indeed had to struggle for air.

C. Events after appellant's removal from the hearing room. After Mr. Kinoy was taken out, a number of attorneys vigorously protested his removal and demanded his return. Chairman Pool at first resisted this request but following considerable colloquy, some very loud (see Tr. 160), he agreed to permit Mr. Kinoy's return and ordered him brought back. By this time Mr. Kinoy had been removed from the area, however, and could not be returned (Tr. 140-141, 159-160, 191-194). Mr. Pool's request that Mr. Kinoy return is of especial significance as is the fact that no member or employee of the Committee participated either as charging party or as witness in the within proceedings.[9]

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[9] It is clear that Chairman Pool did not feel that Mr. Kinoy's conduct in relationship to the Committee required an arrest. In reply to Mr. Gutman's request that Mr. Pool direct that Mr. Kinoy be returned to the hearing room, Mr. Pool responded: [fn. continued on next page]

## D. The lower court's factual findings.

The court below credited entirely the testimony of the United States Deputy Marshals concerning events before the HUAC Subcommittee (Tr. 254-255, 257-258; R. [op. 2-3]), despite the significant contradictions between the marshals' testimony and the official stenographic transcript of the subcommittee hearing, which supported the defense witnesses' general version of the episode.

The most striking feature of the court's factual discussion is that it does not even disclose that the facts concerning what occurred before the subcommittee were hotly disputed at trial and that the transcript before HUAC for the most part supports the version of the defense witnesses. This leads to a series of statements in the court's opinion in which it contradicts the record before HUAC without even mentioning that there is a conflict.

Thus, for example, the court takes the view that the application originally made by appellant's law partner and argued by appellant was "denied" before appellant began to argue, and that appellant "pursued the same request which had just been denied" (R. [op. 2]). However, the transcript reveals that the request had not been denied before appellant spoke; rather, a subcommittee member moved that the request be denied, and appellant began by asking "to be heard on that motion" (R.).

At another point the court states that the subcommittee chairman "told defendant again and again to be seated" (R. [op. 2]). This conclusion appears to rest on the testimony of some one or all of the marshals, who variously testified that the chairman directed appellant to sit down "on many occasions" (Bird, at Tr. 8), "several" occasions (Bird, at Tr. 21), "several times" (Hockman, at Tr. 44), "on several occasions . . . more than two . . . probably . . . a half dozen or more" (Vandegrift,

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[Continuation of fn. 9 from previous page]

> "If you remember, I asked if he was outside the door and, if he was, to return him to the room. But evidently they took him on down and booked him for disturbing the peace. I cannot be responsible for what he did to the officer. That would be up to them to make whatever charge they want'" (Investigative Hearings, cited supra, note 4, at 1037).

at Tr. 86-87). Yet the HUAC transcript shows that the chairman told appellant to be seated on only one occasion (as the defense witnesses testified (Tr. 138, 157-159, 189-190, 214-215)) -- unless the repetition of the directive within nine words: "Now sit down. Go over there and sit down" (R.) can be considered two occasions.

An official transcript of proceedings is quite obviously much more reliable than the memories of witnesses who were deeply involved in an event and much concerned with the outcome of a trial. Because of the greater reliability of a transcript, many courts have gone so far as to rule that the existence of a transcript precludes the introduction of other testimony regarding a prior proceeding. See Benge v. Commonwealth, 298 Ky. 562, 183 S.W.2d 631 (1944); Walker v. Walker, 14 Ga. 242, 249 (1853); Turner v. Southwest Missouri Ry., 138 Mo. App. 143, 120 S.W. 128 (1909). The courts of this jurisdiction have not gone so far as to preclude other testimony. See Meyers v. United States, 171 F.2d 800 (D.C.Cir. 1948), cert. denied, 336 U.S. 912 (1949). However, as Judge Prettyman, eloquently dissenting in the Meyers case, pointed out, the greater reliability of a transcript creates a powerful argument for giving it higher evidentiary status than mere vague oral recollections. Common sense demands that in a case where a transcript and oral testimony are directly conflicting, a finder of fact must demonstrate that he has recognized the greater reliability of the transcript and has for some sound reason determined to ignore it. In the present case there was no suggestion by any party that the transcript was inaccurate and unreliable. The government and the trial court simply chose to ignore it without even acknowledging that fact. No fact finding process which has truth as its goal can afford to give such cavalier treatment to an official transcript.

Appellant's principal submissions in this appeal require a reversal of this conviction even if the evidence be viewed in the light most favorable to the prosecution and as enunciated by the lower court. Nevertheless in view of the singular circumstance of the lower court's entirely ignoring the HUAC transcript and failing to acknowledge the existence of any conflict in the testimony, it is particularly appropriate that this Court exercise its undoubted power to make an independent review of the facts on the whole record.

Where, as here, constitutional issues of moment emerge from mixed findings of fact and law, the authority of an appellate court to take an independent view of the whole record is plain. Indeed, the Supreme Court of the United States has taken such a view even in cases coming from the state courts, over which the Supreme Court does not have a general superintending power analogous to this court's power over the Court of General Sessions. See, e.g., Edwards v. South Carolina, 372 U.S. 229 (1963); Haynes v. Washington, 373 U.S. 503 (1963); Cox v. Louisiana, 379 U.S. 536 (1965); Holt v. Virginia, 381 U.S. 131 (1965).

The constitutional issues affected by this decision deal not only with right of counsel under the Sixth Amendment but such right as exercised in the very area of the First Amendment. It should not be forgotten that legal advocacy -- and often legal advocacy of unpopular causes before impatient and even hostile tribunals -- has been for our free society one of the most vital channels of expression for originating and profoundly transforming politically and morally regenerative ideas. Here we are at the very core of the First Amendment. But throughout the range of our legal institutions, advocacy has not been only this: it has been and remains the safeguard most relied upon to defend and protect our other basic freedoms, the bedrock preservator of all other rights under the rule of law. Cf. NAACP v. Button, 371 U.S. 415 (1963).

Here appellant had begun litigation of great constitutional significance, the substantiality of which, as pointed out above, has just recently been recognized by the Court of Appeals for the Seventh Circuit in Stamler v. Willis, ___F.2d ___ (Nov. 10, 1966). He was carefully making a record of the Committee's refusal to allow cross-examination, which fact was in truth vital to his claim that the Committee was acting unconstitutionally. Some insight into the significance of appellant's position has come glaringly albeit fortuitously to light by reason of events since his conviction. On October 18, 1966, the question was raised in the House of

Representatives whether it was not the fact that the House Un-American Activities Committee was secretly paying friendly witnesses for testifying. Members of the Committee denied that this was the fact (112 Cong. Rec. 26,393c[10] - 26,394a, 26,396a, b, 26,458b; daily ed., October 18, 1966). Then the denial was qualified (id., at 26,459a, b; 26,468a). Nevertheless, the following day it was brought out that such a witness at the hearing out of which appellant's prosecution arises was paid $1,000 (ibid., at 26,682a; October 19, 1966).

Appellant was attempting to persuade the subcommittee that cross-examination of friendly witnesses should be allowed. Of course, that issue is in no way involved in the present case. It was for the subcommittee in the first instance, and, after an adequate record on the point had been made, for Congress or the courts in another forum. But in the light of the later disclosures a clearer instance of lawyer's conduct deeply rooted in, and striving to protect, the First Amendment can scarcely be imagined.

While, as we will demonstrate, the conviction must be reversed even upon the court's version of the facts, it does not seem appropriate that in a case so vitally affecting constitutional rights, factual findings so cavalierly arrived at be left unreviewed and uncorrected by this court.

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[10] "a", "b", and "c" refer to columns on the cited page.

## I.

## APPELLANT'S CONVICTION MUST BE REVERSED BECAUSE NO VIOLATION OF D.C. CODE SEC. 22-1107 WAS CHARGED OR PROVED -- AND THAT IS THE ONLY STATUTE CLAIMED TO HAVE BEEN VIOLATED.

It will be recalled that the prosecution was expressly based upon D.C. Code Sec. 22-1107 (Tr. 243-244).

A striking aspect of the oral and written opinions rendered by the court below is that they nowhere describe the legal offense of which appellant is found guilty, nowhere identify the statute or rule of law under which his conduct is adjudged an offense, and nowhere articulate what are the elements of the offense or how the proof is found to establish each element.[11/] We will demonstrate, however, that D.C. Code Sec. 22-1107 punishes conduct in the nature of unlawful assembly and conduct in the nature of profanity. Neither sort of prohibited conduct was charged or proved in this prosecution.

### A. The plain meaning of Sec. 22-1107.

Section 22-1107 itself is a specific penal prohibition and, like other penal prohibitions, has specific elements. It does not and cannot leave "judges and jurors free to decide, without any legally fixed standards, what is prohibited and what is not in each particular case." Giaccio v. Pennsylvania, 382 U.S. 399, 402-403 (1966). In prosecutions under it, "It is clear as a matter of law that the usual standards of the criminal law must be observed, including proper allegation and proof of all the essential elements of the offense." Gojack v. United States, 384 U.S. 702, 707 (1966).

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[11/] The only suggestion below of the nature of the offense of which appellant was convicted appears in footnote 1 of the court's opinion denying arrest of judgment (R. [op. 1] n. 1). The footnote invokes, alternatively or collectively, D.C. Code § 22-1107 -- both "that portion of the statute which requires a showing [of assembly]" and some other unidentified portion --, D.C. Code § 22-3111, and the common law of disorderly conduct. The elements of none of these proscriptive provisions are discussed. And, because the footnote addresses only the question of pleading as distinguished from proof, there is no attempt to match appellant's conduct to whatever the elements of the offense or offenses may be. We shall deal infra with the separate point that appellant's conviction cannot consistently with due process of law be sustained, as suggested by the lower court, upon any grounds other than a violation of Sec. 22-1107.

Section 22-1107 provides:

> § 22-1107. Unlawful assembly -- Profane and indecent language.
>
> It shall not be lawful for any person or persons within the District of Columbia to congregate and assemble in any street, avenue, alley, road or highway, or in or around any public building or inclosure, or any park or reservation, or at the entrance of any private building or inclosure, and engage in loud and boisterous talking or other disorderly conduct, or to insult or make rude or obscene gestures or comments or observations on persons passing by, or in their hearing, or to crowd, obstruct, or incommode, the free use of any such street, avenue, alley, road, highway, or any of the foot pavements thereof, or the free entrance into any public or private building or inclosure; it shall not be lawful for any person or persons to curse, swear, or make use of any profane language or indecent or obscene words, or engage in any disorderly conduct in any street, avenue, alley, road, highway, public park or inclosure, public building, church, or assembly room, or in any other public place, or in any place wherefrom the same may be heard in any street, avenue, alley, road, highway, public park or inclosure, or other building, or in any premises other than those where the offense was committed, under a penalty of not more than $250 or imprisonment for not more than ninety days, or both for each and every such offense.

The structure of the section makes plain that two distinct offenses are created by it. The language following the first "It shall not be lawful" clause punishes persons who "congregate and assemble" in streets, public buildings and other public places and "engage in loud and boisterous talking or other disorderly conduct." And is a conjunctive; to violate this first portion of § 22-1107, one must both "congregate and assemble" and talk loudly or boisterously or engage in other disorderly conduct.[12/]

The language following the second "it shall not be lawful" clause punishes persons who curse, swear, use profane, obscene or indecent language "or engage in any disorderly conduct" in streets, public buildings and other public places or private places from which the cursing, swearing, profanity, etc. may be heard abroad.

The two sorts of conduct prohibited by the section are aptly characterized by its title: "Unlawful assembly -- Profane and indecent language."

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[12/] If "congregate and assemble" and "engage in loud and boisterous talking" are disjunctive, Congress has made it a crime simply to congregate and assemble in the District. The impossibility, as well as the unconstitutionality (see Edwards v. South Carolina, 372 U.S. 229 (1963)) of such a construction requires no demonstration.

B. The charge against the appellant is deficient in that a basic element of the offense--congregation and assembly--was not charged.

Appellant patently was not charged or proved to have violated the first (unlawful assembly) portion of the statute. The information filed against him did not allege that he congregated and assembled, but only that he engaged in loud and boisterous talking and other disorderly conduct. It thus was no more adequate to charge a violation of the unlawful-assembly portion of § 22-1107 than would be a housebreaking information alleging that the defendant did enter the house of A, but failing to allege that he entered with intent to commit a criminal offense therein. Both informations charge fifty per cent of a crime. It is elementary that the Government must do somewhat better than this to meet its obligation that the charging paper "set forth the elements of the offense sought to be charged." Walker v. United States, 342 F.2d 22, 26 (5th Cir. 1965); see, e.g., United States v. Bailey, 277 F.2d 560 (7th Cir. 1960); Robinson v. United States, 313 F.2d 817 (7th Cir. 1963); Hildebrand v. United States, 261 F.2d 354 (9th Cir. 1958); Robinson v. United States, 263 F.2d 911 (10th Cir. 1959).[13/]

The prosecution's failure to allege or prove that appellant congregated and assembled also makes unnecessary decision of issues relating to other elements of the unlawful-assembly portion of § 22-1107. However, it is evident that the prosecution also failed to prove that appellant's talk was "loud and boisterous." These two words are conjunctive; both loudness and boisterousness must be proved; one alone is insufficient. See Commonwealth v. Lombard, 321 Mass. 294, 73 N.E.2d 465 (1947); State v.

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[13/] The court below apparently took the view that appellant's failure to attack the information by motion prior to verdict waived his claim that it failed to state an offense. (See R. [op. 1] n. 1.) But Rule 10(b)(2) of the Criminal Rules of the Court of General Sessions provides that "the failure of the information to charge an offense shall be noticed by the Court at any time during the pendency of the proceedings." Under the parallel provision of FED. RULE CRIM. PRO. 12(b)(2), similar defects have been noticed even when raised for the first time on appeal from conviction (see the Walker, Bailey and Robinson (10th Cir.) cases cited in text); indeed, they have been noticed on collateral attack under 28 U.S.C. § 2255 when raised after conviction on a plea of guilty (see the Robinson (7th Cir.) and Hilderbrand cases cited in text).

Mullen, 67 N.J.L. 451, 51 A. 461 (1902); Commonwealth v. Greene, 410 Pa. 111, 189 A.2d 141 (1963). Assuming arguendo that the testimony of the marshals, if preferred over the testimony of defense witnesses, sufficed to establish that appellant's argument was "loud" in the statutory sense (i.e., unduly loud), nothing in the record supports a finding it was "boisterous." The content of what appellant said was indisputably not boisterous (i.e., rough, turbulent, abusive); the marshals, of course, did not even recall the content, and defense testimony and the HUAC transcript portray the content as legal argument.[14/]

We need not dwell upon the second (profane language) portion of Sec. 22-1107. The prosecution made no claim of profanity by appellant and the record affirmatively shows he used none. While the second portion of the statute also refers to "any disorderly conduct," it is clear that the phrase must be read in the context of that which precedes it and must therefore refer to some aspect of profanity or indecency. Indeed this court in Jalbert v. District of Columbia, 221 A.2d 94, 98 (D.C.C.A., 1966) held that this principle of ejusdem generis was applicable to the phrase "other disorderly conduct" appearing in the first half of the statute. In that case the court held that "going limp" was not violative of the first portion of Sec. 22-1107 because "The words 'other disorderly conduct' must be read with the preceding words 'loud and boisterous talking' and could only be intended to mean other like disorderly actions . . ." (italics in original at p. 98). No reason appears why the same interpretative approach should not apply to the second half of the statute.

C. The proofs against the appellant are deficient in that a basic element of the offense--congregation and assembly--was not proved.

Nor was the Government's proof in this respect any better than its pleading. There is no showing that appellant "congregate[d] and

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[14/] The only testimony which speaks to the issue of boisterous talking, as distinguished from loud talking, is the testimony of Deputy Hockman, in terms of the legal conclusion, that appellant's demeanor was "boisterous" (Tr. 41, 53). This court has already held in a cognate matter that such conclusory testimony will not support a verdict and, indeed, is incompetent. Heilman v. District of Columbia, 172 A.2d 141 (M.C.A.D.C. 1961).

assemble[d]" -- unless it can be supposed that an attorney's attendance at a congressional subcommittee meeting to represent a client subpoenaed by the subcommittee constitutes congregating and assembling. The court below held that it did, saying that the requirement of congregating and assembling "means only that the offense was committed in the presence of others" (R. [op. 1] n. 1).[15] But this construction of the statute is quite untenable, for several reasons: (1) On the face of the language, "congregate and assemble . . . and engage in loud and boisterous talking or other disorderly conduct" is an absurdly periphrastic and inappropriate manner of saying "talk loudly or be disorderly in the presence of another." (2) Congress knows how to convey such notions as "in the presence of others" when it chooses. The second (profane language) portion of § 22-1107 makes profanity punishable when uttered "in any place wherefrom the same may be heard" off the premises. The purpose here is indeed to prohibit any public speech of a certain sort, but the sort is limited to profane and obscene speech and similar matter. (3) The title of the statute in this aspect -- "Unlawful assembly" -- coupled with its concerns for such matters as blocking streets, obstructing entrances, jeering at passersby, etc., conveys a rather clear picture of what the first portion of § 22-1107 was designed to reach: unruly or obstreperous gatherings or crowds. The section punishes persons who congregate and assemble in such crowds. and who participate in their rowdiness by loud and boisterous talking, catcalling at passersby, blocking passages and other like disorderly acts.[16] It does not punish simply loud and boisterous talking "in the presence of others," as the court below thought (and under which construction Chairman Pool was as guilty of violating § 22-1107 as was appellant), or even loud and boisterous talking in an orderly meeting convened by solemn governmental authority. Under the latter constructions, a Supreme Court Justice who unduly harangued his brethren in Conference or a prosecuting attorney perorating to a jury would be guilty of the offense. (4) Finally, grave constitutional difficulties would be raised by construction of § 22-1107 to penalize loud talking -- or "other disorderly conduct" generically -- whenever done in the presence of another, a point separately dealt with below.

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[15] For this proposition the court relied upon Morris v. District of Columbia, 31 A.2d 652 (M.C.A.D.C. 1943). The case is inapposite. Morris' conviction was affirmed under the second (profane language) portion of § 22-1107, which, unlike the first (unlawful assembly) portion, has no requirement of congregation and assembly. Appellant has found no decisions of this Court which support in the slightest the construction of the unlawful assembly portion of § 22-1107 below. The section was before the Court in Heilman v. District of Columbia, 172 A.2d 141 (M.C.A.D.C. 1961); Allen v. District of Columbia, 187 A.2d 888 (D.C.C.A. 1963); and Jalbert v. District of Columbia, 221 A.2d 94 (D.C.C.A. 1966). In all these cases, § 22-1107 convictions were reversed on grounds that cast no illumination on the section's construction.

[16] See the construction of similar "congregate" legislation in People v. Carcel, 3 N.Y. 2d 327, 144 N.E.2d 81 (1957).

D. The lower court's effort to "incorporate the common law of breach of the peace" does not expand or alter the plain meaning of the statute.

The court below took no issue with any of this analysis, but ignoring alike the language of the two portions of Sec. 22-1107 said simply that "Sec. 22-1107 incorporates the common law concept of breach of the peace" (R. [op. 1] n. 1).

The court did not explain what it meant by the term "incorporate" and none of the cases cited by the court is particularly illuminating. One group of the cited decisions (Hill, Masters, Hamilton, Tyner)[17] merely holds that criminal statutes which employ common-law terms or which parallel the coverage of common-law criminal doctrines and do not explicitly add to, subtract or modify elements or incidents of those doctrines, will be taken as retaining, "codifying," the common-law definition of the offense and ancillary common-law criminal procedures. None of these cases involves D.C. Code § 22-1107. Each case considers the specific criminal statute in issue there -- the murder statute in Hill and Hamilton, embezzlement in Masters, conspiracy to defraud in Tyner -- and after detailed study of the text concludes that because the statutory elements are the same as those of the offense at common law, common-law principles, authorities or procedures apply. But the court below undertook no similar textual study of § 22-1107. Such a study, as we have just shown, is conclusive that § 22-1107 deals with matters quite different from common law breach of the peace.[18/] If there is any present enactment in the District that arguably "incorporates the common law concept of breach," it is D.C. Code Sec. 22-1121, Disorderly Conduct - Generally. Defendant was not charged with violation of that statute. Even that section was somewhat narrower than the common law; a glance at the Code reveals that the whole of Chapter 11 of Title 22 ("Disorderly Conduct") deals with some aspects of conduct that were breaches of the peace at common law -- duelling, lewd acts, disturbing congregations, etc. In this statutory context, it is clear beyond peradventure that Sec. 22-1107 does not incorporate common-law breach of the peace.

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[17] Hill v. United States, 22 App. D.C. 395 (1903); Masters v. United States, 42 App. D.C. 350 (1914); Hamilton v. United States, 26 App. D.C. 382 (1905); Tyner v. United States, 23 App. D.C. 324 (1904).

The second group of decisions cited by the court below (Davis, Durham)[19/] in support of its concept of "incorporation" reflects a different aspect of the common-law heritage of the District: the principle that, where not preempted or superseded legislatively, common-law criminal doctrines survive and retain their effect as common-law doctrines. This principle, even if applicable here, would not suggest that § 22-1107 "incorporated" common-law breach of the peace, but only that the common-law offense endured independently of § 22-1107 -- a proposition that is irrelevant to appellant's guilt or innocence in a prosecution founded exclusively (as this one must be) on Sec. 22-1107. It will be recalled that the charge is that Defendant violated an "Act of Congress."

But, in any event, the principle is not applicable to the field of breach of the peace. That field is comprehensively regulated by Chapter 11, Title 22 and other provisions of the Code. These present what this

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[18/] Sec. 22-1107 describes a much more limited standard for the crime of unlawful assembly than that at common law, actually eliminating as an element of that crime the requirement of disturbing the peace, or "terror" (Wharton, 3 Criminal Law (11th Ed.) 2050, § 1851). It also includes the offense of profanity and indecency which is really quite unrelated to breach of the peace.

[19/] United States v. Davis, 71 F. Supp. 749 (1947), rev'd, 167 F.2d 228 (1948); Durham v. United States, 214 F.2d 862 (D.C. Cir. 1954).

Court has called "a clear legislative pattern" for dealing with disorderly conduct in the District. Feeley v. District of Columbia, 220 A.2d 325, 330 (D.C.C.A. 1966). The pattern is comprehensive and leaves no room for survival of common-law catch-alls. Particularly in light of the concerns for fair notice and the rule of law by "legally fixed standards" which have become increasingly evident in the Supreme Court's recent evolution of the vagueness doctrine through decisions such as Giaccio v. Pennsylvania, p. 18, supra, and Ashton v. Kentucky, p. 31, infra, this Court should set itself firmly against the perpetuation of needless, superseded and amorphous common-law crimes. To do otherwise would be to retain doctrines "unsuited to our Republican form of government" under the Constitution, see Tyner, supra, and invite constitutional disaster in the administration of the criminal law.

We have analyzed in some detail the statutory construction of D.C. Code 22-1107 though the matter can be approached quite simply. No one reading this statute would believe that it was intended to or did in fact cover a lawyer's legal argument, the level of his voice, or the persistence of his advocacy. The strained effort by the lower court to make the language of the statute fit the facts here presented not only contradicts directly the plain meaning of the statute but, as we shall see, presents serious constitutional questions. But these constitutional questions emerge in this case only because of the effort to use the statute in a situation never intended to be covered thereby. All that is required at this point is a reading of the statute by its plain language; so read, it cannot possibly apply to the instant case.

## II.

## APPELLANT'S CONVICTION VIOLATES THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION CLAUSE BECAUSE:

1) EITHER HE WAS CONVICTED OF AN OFFENSE OF WHICH HE WAS NOT CHARGED, OR
2) THE STATUTE UNDER WHICH HE WAS TRIED WAS BY "INTERPRETATION" EXTENDED TO ENCOMPASS AN AREA CLEARLY BEYOND ITS SCOPE.

It has been settled since at least Cole v. Arkansas, 333 U.S. 196 (1948), that a post conviction reliance upon a statute (or common law offense) of which the defendant was not charged violates the constitutional requirement of fair notice of the nature of the charge. A related proposition is that an "interpretation" of a criminal statute to encompass an area clearly beyond its scope, equally violates the essentials of due process. See Bouie v. City of Columbia, 378 U.S. 347 (1964).

It is with these propositions in mind that we approach the extraordinary effort in the opinion of the court below to inject other statutes or the common law into the case.

1. Appellant was charged by information in a printed form drawn under D.C. Code § 22-1107, P. 1, supra. In closing argument, the prosecutor said in terms that § 22-1107 was the sole basis of the charge (Tr. 243-244). No mention was made at any time prior to judgment of D.C. Code § 22-3111 (1961), which provides: "Any person guilty of disorderly and unlawful conduct in or about the public buildings and grounds belonging to the United States within the District of Columbia . . . shall, upon conviction thereof, be fined not more than fifty dollars." Indeed, although the Government in its brief in opposition to appellant's motion for arrest of judgment did seek to go beyond § 22-1107 and belatedly to expand the nature of the charge to encompass common-law disorderly conduct, even its resourcefulness failed to suppose that D.C. Code § 22-3111 could be brought into this case. Yet Judge Greene's opinion denying arrest of judgment invokes § 22-3111 as a supporting or alternative basis for appellant's conviction. See note 11 supra.

This is plain constitutional error requiring reversal. Such a post-verdict shift resting conviction on a statute that was never brought to appellant's attention as presenting issues for trial, and which appellant was therefore offered no fair opportunity to meet, denies him the first essentials of the procedural regularity demanded by due process of law. Cole v. Arkansas, supra. See, e.g., Shuttlesworth v. Birmingham, 376 U.S. 339 (1964).

The same constitutional requirement which invalidated a conviction based upon D.C. Code Sec. 22-3111 would prevent a conviction for a violation of any common law crime.

2. If the prosecution is analyzed as being based exclusively on D.C. Code Sec. 22-1107 then it must be acknowledged that on this record, Sec. 22-1107 can be applied to punish appellant's conduct only if it be construed, as the court below construed it, to incorporate "the common law concept of breach of the peace" (R. [op. 1] n. 1) or, alternatively, if it be read to prohibit "loud and boisterous talking" "in the presence of others" (ibid.). In either construction, the statute would be unconstitutional in its application to appellant by force of the Fifth Amendment's Due Process Clause alone. Consistent with that Clause, an individual may not be criminally punished for violation of a statute whose terms fail to give him fair notice of the conduct prohibited, even though the statute be construed in the prosecution against him in such a manner as to delimit its vague generality. E.g., Lanzetta v. New Jersey, 306 U.S. 451 (1939; see generally, Note, 109 U. PA. L. REV. 67 (1960). Citing the U. PA. L. REV. note in Bouie v. City of Columbia, 378 U.S. 347, 353 (1964), the Supreme Court said:

> If this view is valid in the case of a judicial construction which adds a 'clarifying gloss' to a vague statute, id. at 73, making it narrower or more definite than its language indicates, it must be *a fortiori* so where the construction unexpectedly broadens a statute which on its face had been definite and precise. Indeed, an unforeseeable judicial enlargement of a criminal statute, applied retroactively, operates precisely like an *ex post facto* law, such as Art. I, § 10, of the Constitution forbids.

On its face, § 22-1107 defines two distinct and articulately defined offenses and does not, by any stretch of the imagination incorporate "the common law concept of breach of the peace." One of those offenses is "to congregate and assemble in any street, avenue . . . or in or around any public building . . ., and engage in loud and boisterous talking or other disorderly conduct." Congregate and assemble does not come near meaning act "in the presence of others." No reasonable man (or reasonable lawyer) reading this statute could conceive that it had any application to argument before a congressional investigating committee. This is an exaggerated instance of the precise evil condemned by Bouie, supra, and the Supreme Court's decision in that case compels reversal of appellant's conviction.

The practice of reading criminal statutes narrowly to avoid such constitutional traps, is well settled. Pierce v. United States, 314 U.S. 306 (1941). Mr. Justice Holmes put the principle with incomparable lucidity in McBoyle v. United States, 283 U.S. 25, 27 (1931), holding the National Motor Vehicle Theft Act inapplicable to aircraft:

> Although it is not likely that a criminal will carefully consider the text of the law before he murders or steals, it is reasonable that a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear. When a rule of conduct is laid down in words that evoke in the common mind only the picture of vehicles moving on land [or unlawful assemblies], the statute should not be extended to aircraft [or an attorney's conduct in legal argument before a court or committee], simply because it may seem to us that a similar policy applies, or upon the speculation that, if the legislature had thought of it, very likely broader words would have been used.

The McBoyle case points the direction to an appropriate narrow reading of the statute to avoid constitutional questions. If the court does not proceed to a restrictive interpretation then the Bouie case would render the conviction clearly violative of due process.

## III.

## AS APPLIED TO APPELLANT, D.C. CODE SEC. 22-1107 IS UNCONSTITUTIONAL AS A VAGUE AND OVERBROAD REGULATION OF FREE SPEECH AND ADVOCACY IN VIOLATION OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION.

Aside from the general constitutional requirement of specificity and clarity in criminal statutes which we have mentioned above, and which is represented in cases such as Lanzetta, McBoyle and others, there is a special rule applied by the Supreme Court, in the case of statutes sought to be used in a manner which may curb the exercise of First Amendment rights.

"Standards of permissible vagueness are strict in the area of free expression," N.A.A.C.P. v. Button, 371 U.S. 415, 432 (1963), and in other areas where indefiniteness may overreach fundamental civil liberties, see Louisiana v. United States, 380 U.S. 145 (1965), such as the right to counsel guaranteed by the Sixth Amendment. Compare Dombrowski v. Pfister, 380 U.S. 479, 486-487 (1965), and authorities cited, with United States v. National Dairy Products Corp., 372 U.S. 29, 36 (1963).

There are cogent reasons why the Supreme Court has been especially sensitive to the impact of vague and overbroad statutes in applications that threaten these liberties. A vague statute in the area is "susceptible of sweeping and improper application," N.A.A.C.P. v. Button, supra, at 433, furnishing in its overbreadth a convenient tool for "harsh and discriminatory enforcement by prosecuting officials, against particular groups deemed to merit their displeasure," Thornhill v. Alabama, 310 U.S. 88, 97-98 (1940), and inviting arbitrary, autocratic and harassing uses by public authorities. "It is enough that a vague and broad statute lends itself to selective enforcement against unpopular causes." N.A.A.C.P. v. Button, supra, at 435. The threat that criminal penalties will fall upon any citizen who, in the service of an unpopular cause, guesses wrongly the boundaries of his constitutional freedoms (or is unable to persuade a trial judge or jury to discredit the testimony of policemen that he guessed them wrongly), serves effectively to coerce the citizen to steer far clear of the boundaries, and hence to forego out of fear the exercise of rights which the Constitution has forbidden government to inhibit. See Thornhill v. Alabama, supra, at 97-98; Smith v. California, 361 U.S. 147, 150-151 (1959); Cramp v. Board of Public Instruction, 368 U.S. 278, 286-288 (1961); Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 66-70 (1963); Baggett v. Bullitt, 377 U.S. 360, 378-379 (1964). Thus it is the very existence of the statute and its application to activities in the First Amendment area which has the inhibiting effect proscribed by the Constitution.

The Supreme Court has responded to these dangers with a doctrine that persons charged under a statute which is not "narrow and specific," Cox v. Louisiana, 379 U.S. 536, 551 (1965), have been permitted to secure the statute's invalidation in any application which potentially menaces or overshadows First Amendment or other fundamental civil liberties, without showing that their own conduct, on which the charge is based, would be immune from prosecution under a narrowly drawn statute.

> We have consistently allowed attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with the requisite narrow specificity. Thornhill v. State of Alabama, 310 U.S. 88, 97-98 . . .; NAACP v. Button, supra, 371 U.S., at 432-433 . . .; cf. Aptheker v. Secretary of State, 378 U.S. 500, 515-517 . . .; United States v. Raines, 362 U.S. 17, 21-22 . . . . We have fashioned this exception to the usual rules governing standing, see United States v. Raines, supra, because of the ". . . danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application."
> NAACP v. Button, supra, 371 U.S., at 433 . . . .
> (Dombrowski v. Pfister, 380 U.S. 479, 486-487 (1965)).

Plainly, appellant was exercising First and Sixth Amendment rights, the very area where standards of "narrow specificity" apply. Advocacy of a client's cause before a court or a congressional committee implicates not only the client's constitutional right to counsel, Holt v. Virginia, 381 U.S. 131 (1965), and all of the underlying rights which counsel's services are exerted to protect, but also the rights of both lawyer and client to freedom of expression in the form of vigorous and effective advocacy. The Supreme Court has plainly recognized "First Amendment rights to enforce constitutional rights through litigation." N.A.A.C.P. v. Button, 371 U.S. 415, 440 (1963). See also Brotherhood of Railroad Trainmen v. Virginia ex rel Virginia State Bar, 377 U.S. 1 (1964); Dombrowski v. Pfister, supra.

In an unbroken line of decisions, the Court has persistently reversed breach of the peace convictions of persons whose conduct, allegedly criminal, touched First Amendment concerns. Cantwell v. Connecticut, 310 U.S. 296 (1940); Edwards v. South Carolina, 372 U.S. 229 (1963); Henry v. City of Rock Hill, 376 U.S. 776 (1964); Cox v. Louisiana, 379 U.S. 536 (1965). The last of these decisions made the point categorically: the charge of breach of the peace, applied in areas of First Amendment involvement

> is unconstitutional in that it sweeps within its broad scope activities that are constitutionally protected free speech and assembly. Maintenance of the opportunity for free political discussion is a basic tenet of our constitutional democracy. As Chief Justice Hughes stated in Stromberg v. California, 283 U.S. 359, 369: "A statute which upon its face, and as authoritatively construed, is so vague and indefinite as to permit the punishment of the fair use of this opportunity is repugnant to the guaranty of liberty contained in the [Constitution] . . . . (379 U.S. at 552).

"These decisions recognize that to make an offense of conduct which is 'calculated to create disturbances of the peace' leaves wide open the standard of responsibility" and is unconstitutional. Ashton v. Kentucky, 384 U.S. 195, 200-201 (1966). As recently as Adderly v. Florida, 35 U.S. L. Week 4013, 87 S.Ct. 242 (U.S., November 14, 1966), the Supreme Court reiterated the point.

Tested by the standards of vagueness applicable to conduct in the First Amendment area, Sec. 22-1107 as construed by the court below is unconstitutional. It is a considerable understatement to suggest that the statute sought to be applied in this case is vague. The lower court's reading of "congregate and assemble" to mean "in the presence of others"; its "incorporation" of the common law of breach of the peace without further definition; its reaching out for some assistance from D.C. Code 22-3111; its reading of "boisterous" as encompassing mere persistence in oral argument, all emphasize the amorphous and vague qualities of the statute.

In the face of the consistent line of decisions which strike down the application of vague "breach of the peace" type of statutes to peaceful demonstrational or other types of First Amendment activity, it is inconceivable that the same kind of vague statute could be constitutionally applied to a lawyer's argument pleading -- even if persistently -- for the right to cross-examine a witness.

## IV.

## EVEN IF SEC. 22-1107 IS CONSTRUED TO PROHIBIT DISORDERLY CONDUCT GENERALLY, AND EVEN IF IT MAY BE CONSTITUTIONALLY APPLIED TO THE INSTANT CASE, THERE IS INSUFFICIENT EVIDENCE TO SUPPORT APPELLANT'S CONVICTION.

We have shown that Sec. 22-1107 does not prohibit disorderly conduct generally, but only specific sorts of conduct involving either unlawful assembly or profanity having nothing to do with appellant's case. But, in any event, the evidence is not sufficient to support appellant's conviction of disorderly conduct, however broadly conceived, for several separate reasons.

A. Appellant was convicted on an erroneous view of the mens rea requisite for guilt of the offense of disorderly conduct, and there is insufficient evidence to support a finding of the requisite mens rea.

It was argued below that in order for appellant to be convicted there had to be a finding of a "criminal intent" and "intent to obstruct" the proceeding (Tr. 232). The court below expressly rejected this contention and took the view that appellant could be convicted of disorderly conduct without any finding that he intended to be disorderly, or to obstruct the proceeding, or to create a disturbance, if only he had "an intent simply to be loud; in other words, to be loud notwithstanding the obvious desire of the Chairman for the lawyers who were then representing these witnesses to desist from further argument" (See Tr. 233-234). This view is essential to the court's holding appellant guilty, for there is insufficient evidence to support a finding of any more culpable intent. But the view is erroneous and compels reversal.

We do not deal in this case with sorts of conduct that are per se socially disruptive, likely productive of serious disorder, shocking or indecent, or even reprehensible under generally accepted moral standards -- such as, for example an assault, cf. Stovall v. United States, 202 A.2d 390 (D.C.C.A. 1964), peeping Tom, cf. Carey v. District of Columbia, 102 A.2d 314 (M.C.A.D.A. 1953), or driving threateningly close to a woman's automobile while making overtures to her, Heilman v. District of Columbia, 172 A.2d 141 (M.C.A.D.A. 1961). Here the act itself supplies the requisite intent. Nor are we dealing with the myriad of regulatory matters in the so called "public welfare offenses" where intent is irrelevant. Cf. Morissette v. United States, 342 U.S. 246, 256 (1952). We are dealing with an attorney pressing legal arguments on constitutional issues in behalf of a client before a legislative committee (or, since the cases are not distinguishable, a court), who is physically interrupted by arrest in the middle of a sentence -- "Mr. Chairman, let the record show . . . ." -- and charged with crime. With respect to this sort of conduct, assuming it to be punishable at all as "disorderly conduct," the most obvious considerations imperatively demand that it not be punished as such without a requirement of specific intent to create a disturbance.

Lawsuits and committee hearings are not passionless rituals. They arouse the adrenalin of the participants, absorb or distract their concentration, and bombard their reflexes with constantly changing and often conflicting demands. Attorneys must think quickly in volatile situations, and may make mistakes. So may the persons who claim the power to cut him off before his purpose or the legal effect of his advocacy becomes clear.

Because most active lawyers' roles are adversary, and many are adversary against the Government, the motive and danger of harassing prosecutions are considerable, and the more considerable in cases of lawyers who make themselves the spokesmen or defenders of unpopular clients and causes. In these circumstances concern for basic fairness and caution against possible abuse would alone suggest a stringent mens rea requirement for this sort of disorderly conduct, and a very stringent burden of objective factual demonstration before inference might be drawn that the requirement was met. This would be so even if there were no First or Sixth Amendment to the Constitution of the United States.

But the same concern for First Amendment rights which has led the Supreme Court to establish stricter standards of permissible vagueness where a statute threatens free speech has led the Court to insist that scienter is a constitutional requirement in a criminal prosecution which threatens freedom of expression, Smith v. California, 361 U.S. 147 (1959). This requirement was imposed despite the Court's recognition that in many areas not threatening freedom of expression strict criminal liability without a requirement of scienter would be proper.

The principal purpose and effect of criminal punishment of this sort is deterrence, and deterrence involves inevitably a certain amount of overkill -- that is, the inhibition of conduct which it is not the purpose of the statute to deter, but which is in fact deterred because persons subject to criminal liability under the statute will tend to stay as far as they can from, not come close as they can to, the line of penal jeopardy.

This danger of overkill has led the Supreme Court, as it explained in the Smith case, to the conscious development of a whole range of special rules applicable to First Amendment rights.[20/]

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[20/] The high place of First and Sixth Amendment rights in the scheme of values that emanates from the Constitution has frequently been emphasized by the Supreme Court. With respect to the First Amendment, see, e.g., New York Times Co. v. Sullivan, 376 U.S. 254, 269-270 (1964); Marsh v. Alabama, 326 U.S. 501, 509 (1946); Saia v. New York, 334 U.S. 558, 562 (1948); Prince v. Massachusetts, 321 U.S. 158, 164 (1944)(dictum); McKay, The Preference for Freedom, 34 N.Y.U.L.REV. 1182 (1959). With respect to the Sixth Amendment, see, e.g., Gideon v. Wainwright, 372 U.S. 335 (1963); Glasser v. United States, 315 U.S. 60 (1942).

> Our decisions furnish examples of legal devices and doctrines, in most applications consistent with the Constitution, which cannot be applied in settings where they have the collateral effect of inhibiting the freedom of expression, by making the individual the more reluctant to exercise it" (Smith v. California, supra, at 150-151).

If one may blunder into criminality without a requirement of mens rea, without guilty purpose, there will be a strong pressure to withdraw from situations in which a blunder may occur. Specifically, an attorney advocating his client's cause -- perhaps, as here, on constitutional points -- will be restrained and distracted by the thought that he must avoid such zealous and energetic presentation as may bring him within the danger zone. Best forego pressing an argument which meets initial unsympathetic reaction, or striving to make a record where the phrase "Let the record show . . ." may earn a fine or term in jail.

B. Even if this case were viewed as a contempt case -- as the court below did -- there is insufficient evidence upon which to sustain a conviction.

The court below rejected the foregoing arguments, saying that, because attorneys are in any event subject to liability for criminal contempt, "it is difficult to perceive what basis there is for the contention that the disorderly conduct conviction would . . . intimidate attorneys" (R. [op. 5]). "This conviction renders nothing illegal that would not have been illegal in any event. It does not extend by one iota the area of impermissible conduct" (R. [op. 6]).

We shall deal below with the many differences between contempt and disorderly conduct, but at this point we accept the view of the court below that this prosecution goes no further than contempt. It is demonstrable that appellant could not have been held guilty of contempt.

Firstly, the ruling by the lower court that there was no requirement of a "mens rea" puts the conviction completely outside the ambit of contempt. For the law of criminal contempt has, as its most basic postulate, a requirement that the alleged contemnor manifest an "intention to show disrespect for, and defiance of, the court" or tribunal. DANGEL, CONTEMPT § 171

(1939), at p. 78. See, e.g., Panico v. United States, 375 U.S. 29 (1963); United States v. Thompson, 319 F.2d 665 (2d Cir. 1963); People v. Post Standard Co., 13 N.Y.2d 185, 195 N.E.2d 48 (1963). No such "intention" was required for conviction below. Disorderly liability irrespective of evil purpose was substituted for contempt liability that depends on evil purpose. The vast expansion of criminal risk, and its potential "chilling effect"[21/] on attorneys is obvious.

But aside from the foregoing the lower court's view seemed to be that appellant's persistence in his attempts to make a record constituted disorderly conduct -- because in the court's view it would have been contempt -- citing Jones v. United States, 151 F.2d 289 (D.C. Cir. 1945) and other cases.

There are at least two answers to the court's argument.

(1) Appellant's conduct simply would not support a criminal contempt conviction. We do not disagree with Judge Greene that an attorney's persistent refusal to obey a court's or a committee chairman's direction to be quiet may, under some circumstances, be contemptuous, and that counsel's professional obligation to protect his client's rights "does not mean that counsel can do as he pleases" (R. [op. 5]). Those principles are not in issue here. The sole question (under this head of our submission) is whether appellant's conduct could reasonably have been found beyond a reasonable doubt to go over the line even if this were a contempt proceeding. That question cannot be fitly answered without some recognition of the traditional obligations and role of the attorney, for these make clear that some degree of persistence in attempts to make a record is the lawyer's duty, hence his (oftentimes unwelcome) right. See Holt v. Virginia, 381 U.S. 131 (1965). He is enjoined by Canon 15 to "entire devotion to the interests of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability," and is directed that "no fear of judicial disfavor or public

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[21/] Dombrowski v. Pfister, 380 U.S. 479, 487 (1965).

unpopularity should restrain him from the full discharge of his duty." The classic formulation of the extent to which this obligation requires independence even in the face of judicial rulings appears in the colloquy between Lord Erskine (when at the bar) and Buller, J.:

> [A]t length Erskine said, "I stand here as an advocate for a brother citizen, and I desire that the word 'only' be recorded;" whereupon Buller, J., said "Sit down, Sir! remember your duty, or I shall be obliged to proceed in another manner," -- to which Erskine retorted, "Your Lordship may proceed in whatever manner you think fit. I know my duty as well as your Lordship knows yours. I shall not alter my conduct." . . . The Judge took no notice of this reply. Lord Campbell speaks of the conduct of Erskine as a "noble stand for the independence of the Bar . . ." (OSWALD, CONTEMPT OF COURT 30 (2d ed. 1895)).

Against the background of the tradition exemplified by this episode, Oswald concludes that:

> An advocate is at liberty when addressing the Court in regular course, to strongly combat and contest any adverse views of the Judge or Judges expressed on the case during its argument, and to object to and protest against any course which the Judge may take and which the advocate thinks irregular or detrimental to the interests of his client, and to caution juries against any interference by the Judge with their functions, or with the advocate when addressing them, or against any strong view adverse to his client expressed by the presiding Judge upon the facts of a case before the verdict of the jury thereon. An advocate ought to be allowed freedom and latitude both in speech and in the conduct of his client's case (Id. at 38-39).

This view has been espoused judicially by American courts, e.g., Platnauer v. Superior Court, 32 Cal. App. 463, 163 Pac. 237 (1917); Curran v. Superior Court, 72 Cal. App. 258, 236 Pac. 975 (1925), and is daily acted upon by both judges and lawyers.[22/]

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[22/] An example may be taken from the record below:

> Q. [by Mr. King, the Prosecutor] Let's get one other thing straight. Do you say that the reporter on this transcript was in error when he did not indicate that the remarks of Mr. Pool were being made to Mr. Kinoy when he said, "Sit down"?
>
> THE COURT: We've gone over that, Mr. King.

[fn. continued on next page]

The question, then (even were this a contempt case) is not whether appellant persisted in his effort to make a record after he was overruled, but whether he persisted unduly. The prosecution's version of the facts in this regard appears at pp. 4 ff, supra. We submit they will not support a finding of undue persistence amounting to contumely and that no court in the country and no legislative body would have found defendant guilty of contempt on this record.

The substance of appellant's oral presentation was not remembered by the marshals, but they did not deny that it consisted of legal argument alone. The HUAC transcript, which the marshals did not contradict in regard to the words appellant spoke, bears this out. Appellant did not persist defiantly or obnoxiously; he did not address opprobrious remarks to the subcommittee; he did not threaten or belittle or even question its authority. He said nothing that was irrelevant to his legal points, or

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[Continuation of fn. 22 from previous page]

> MR. KING: I'm referring to the incorrect statements. He claims the marshal gave an incorrect statement. I'm asking him if this is an incorrect statement.
>
> THE COURT: I sustain the objection.
>
> [Laughter]
>
> MR. KING: Your Honor, I might say it is a little difficult to try a case when you find that the Canons of Ethics aren't being complied with.
>
> THE COURT: Mr. King, that is completely out of order and I won't have that. Just go on with your examination.
>
> MR. KING: Well, it's not out of order, because the Canons of Ethics specifically provide that if an attorney knows he is to be a witness in a case, that he should not be counsel in the trial.
>
> THE COURT: Mr. King, I've ruled yesterday that these attorneys could testify --
>
> MR. KING: I know you did.
>
> THE COURT: -- and I don't want any further argument along that line.
>
> MR. KING: Well, I can see the position I would be in if I forced my point as was done before this Committee. I have no further questions, your Honor.
>
> THE COURT: Very well.
>
> [The witness left the stand] (Tr. 186-187).

designed to express personal pique or be "cute" or indulge a penchant for speech-making. He did not repeat with stubborn insistence even legal arguments already made and fully heard. Nothing but the arbitrary judgment of the chairman (which could not have been subjected to review on the prosecution's case alone, for failure to put in the transcript) suggested that the substance of his argument had exhausted its utility. The HUAC transcript further shows -- and the marshals did not refute this, although they also did not remember it -- that two subcommittee members were engaged in the colloquy and appellant was speaking to both of them. It is perfectly consistent with the marshals' testimony that appellant's dialogue with Representative Ashbrook in part followed some of the "several" orders to sit down which the marshals testified they heard from Chairman Pool. Of course, appellant's posture to urge such speculation on this Court is rather badly obstructed by the fact that the marshals professed no recollection of the content of the colloquy, while the HUAC transcript -- which does preserve its content -- belies altogether the "several" orders to sit down and hence cannot reflect what suppositiously would have occurred between or after them if in fact they had been given. Be this as it may, the marshals' testimony wholly fails to make out a supportable case of contumelious (let alone disorderly) persistence by appellant.

Indeed a careful reading of the cases cited by the lower court seems only to emphasize the wide difference between the conduct found contemptuous in those cases and appellant's conduct here. Some involved aggravated situations such as "a course of conduct long continued in the face of warnings that it was regarded by the court as contemptuous." Sacher v. United States, 343 U.S. 1, 5 (1952).[23/] Others involved

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[23/] In Jones v. United States, 80 U.S. App. D.C. 109, 110, 151 F.2d 289, 290 (1945), the Court emphasized that counsel had been "repeatedly warned." In Hallinan v. United States, 182 F.2d 880, 883 (9th Cir. 1950), cert. denied, 341 U.S. 952, the defendant on four immediately successive occasions directly engaged in conduct which the court had prohibited. In United States v. Landes, 97 F.2d 378 (2d Cir. 1938), the defendant attorney was directed to take his seat four times, including one threat to "have the marshal put you in your seat."

accusations by a lawyer that the court was guilty of wrongdoing,[24] or did not involve a lawyer at all.[25]

The record in this case simply does not have the quality of long continued persistence after warning to desist which is at the root of cases where the court has sustained contempt convictions. And the special concern of the Supreme Court that mere persistence not be punished was clearly expressed in In Re McConnell, 370 U.S. 230 (1962), where the Court said, at 236:

> "The arguments of a lawyer in presenting his client's case strenuously and persistently cannot amount to a contempt of court so long as the lawyer does not, in some way create an obstruction which blocks the judge in the performance of his judicial duty."

In words which fit perfectly appellant's conduct here, the Supreme Court concluded:

> "The petitioner created no such obstacle here."

(2) Secondly, it is evident that the marshals' version of appellant's persistence in argument is an unsound basis on which to support his conviction. We have so far accepted that version *arguendo*. But we ask this Court to review the record as a whole and make its independent determination of the character of appellant's conduct before the subcommittee. The Court's power to do so is plain and the appropriateness of exercising that power is undeniable. The pertinent portion of the HUAC transcript is set forth above. Judge Greene ignored that transcript without explanation and without even indicating in his opinions that the transcript was before him. Thus this Court is given no reason, and none appears, why the official record of the proceeding in which appellant is alleged to have been disorderly, should be disregarded. Contrary to Judge Greene's

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[24] MacInnis v. United States, 191 F.2d 157 (9th Cir. 1951), cert. denied, 342 U.S. 953, involved language which accused the court of misconduct.

[25] In United States v. Galente, 298 F.2d 72 (2d Cir. 1962), a defendant accused the Judge of "keeping the truth from the jury." In United States v. Hall, 176 F.2d 163 (2d Cir. 1949), cert. denied, 338 U.S. 851, defendants advanced toward the bench in a threatening manner.

conclusion that "The chairman a number of times ordered defendant to stop, . . . and he told the defendant again and again to be seated -- all to no avail" (R. [op. 2]), the transcript shows that Mr. Pool never ordered appellant to stop; that, as stated above, Mr. Pool ordered appellant to sit down once (unless the nine words "Now sit down. Go over there and sit down" could be considered twice); that after this directive and before he was touched by a marshal, appellant uttered one-half sentence: "Mr. Chairman, let the record show . . ."; that Mr. Pool ordered appellant's removal, and that appellant added, before he was dragged off: "Mr. Chairman, I will not be taken from this courtroom. I am an attorney-at-law and I have the right to be heard." Indeed, at this point he certainly did have the right to be heard, for as we shall show below, he was then being physically seized and removed from the hearing in flagrant violation of the committee's own rules. On this record, and considering the quality of the marshals' testimony inconsistent with it, the evidence of appellant's guilt hardly satisfies the scintilla standards, less still proof beyond a reasonable doubt.

C. Appellant cannot be held to have violated the statute on the basis of his conduct after his seizure by the deputy marshals if he had not violated it before.

The court below took the view that appellant could be convicted of disorderly conduct following his seizure by the marshals, even if he had not been guilty of disorderly conduct prior to that time.[26/] One of two views may be taken of Deputy Bird's seizure of appellant by the arm and "back of the belt." It was an arrest, if its purpose was to charge appellant with an offense. (Lesser restraints have been held to be arrests when accompanied by charging purpose. E.g., Kelley v. United States, 298 F.2d 310 (D.C. Cir. 1961); Jackson v. United States, 336 F.2d 579 (D.C. Cir. 1964).) Or, if its purpose was not to charge appellant

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[26/] "Now, even if we accept the proposition that there was no disorderly conduct up to the time of touching by the marshal, which I do not accept -- I find there was disorderly conduct up to that time -- there certainly was disorderly conduct after that" (Tr. 257. See also R. [op. 3] n. 4).

with an offense, it was the commencement of his removal from the committee room. In either event, it was illegal.

If an arrest, it was illegal under established principles. Deputy marshals have no authority to arrest without warrant except that given them by 28 U.S.C. § 549 (1964), which accords them the powers of a sheriff in the locality where they act. In the District, "the rule is settled that an officer may not arrest for a misdemeanor without a warrant unless it is committed in his presence or within his view." Maghan v. Jerome, 88 F.2d 1001, 1002 (D.C. Civ. 1937). See D.C. CODE §§ 4-140-141 (1961). Unless appellant had committed a misdemeanor in Bird's presence, Bird could not lawfully arrest him.

If the commencement of appellant's removal, the seizure was equally illegal. Rule VIII of the House Committee on Un-American Activities specifically governs "removal of counsel from the hearing" for misconduct, and provides that he may be so removed only upon a finding of misconduct by "a majority of the Committee or Subcommittee." No finding was made here, see Gojack v. United States, 384 U.S. 702 (1966); hence, the steps here taken to remove appellant were illegal. Moreover, it will be recalled that the HUAC transcript shows that the appellant was seized by the marshals even before there was any direction from Mr. Pool.

In either event, appellant was entitled to resist the unlawful seizure of his person by any use of force reasonably required to effect resistance. Appellant protested in a loud voice and flailed his arms and legs as he was removed by three marshals, one of whom, an ex-wrestler seven inches taller than appellant, was restraining him in a "chest-and-shoulder bar" that admittedly "slipped" up around his neck. Even if appellant's corroborated testimony that he was flapping for air in a stranglehold is disbelieved, his vocal and physical resistance fell so far short of the force which the law permitted him to use under these circumstances, that there is plainly no evidence, on the prosecution's own testimony to convict appellant on the basis of his post-seizure conduct alone. See Thompson v. Louisville, 362 U.S. 199 (1960).

One last point on this issue. We ask this Court to look at the photograph attached to this brief, and consider whether any conduct of appellant under those circumstances could be considered criminal -- let alone violative of the specific language of Sec. 22-1107, i.e., congregate and assemble and loud and boisterous language. After all appellant has been charged with violating that statute; he has not been charged with resisting arrest. Indeed, this Court, in Jalbert v. District of Columbia, supra, expressly held that "refusals by appellants to voluntarily accompany the police after their arrests . . ." (italics in original), 221 A.2d at p. 98, did not constitute a violation of D.C. Code § 22-1107.[27]

## V.

### APPELLANT WAS PROPERLY ACTING AS AN ATTORNEY AND BEING SO ENGAGED IS ENTITLED TO THE PRIVILEGES OF AN ATTORNEY, WHICH INCLUDE THE PRIVILEGE FROM ORDINARY CRIMINAL PROSECUTION FOR MATTERS DONE OR SAID IN THE MIDST OF LEGAL ARGUMENT.

### A. Appellant was functioning as a lawyer.

Central to the lower court's argument is that appellant was not operating within his rights as a lawyer because the rules of the House Committee limit the role of counsel and preclude cross-examination.

As the court below construed Rule VII(B) of the House Committee on

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[27] We note that on another occasion Judge Greene recognized this point (see the following appearing in an article in the Washington Post POTOMAC of Sunday, September 25, 1966, page 8, entitled "'Revolutionary' Judge on the General Sessions Bench").

> "Greene had just acquitted [a young man] on a disorderly conduct charge. The specific charge was that the youth, arrested for brawling in a cafe, had been guilty of 'loud and boisterous' talking and had used profanity. But the policeman who had arrested the youth admitted, under questioning, that he could not testify that he had specifically heard the boy say anything. The officer then tried to inject that the youth had scuffled with him at the arrest, but Greene pointed out that the boy was charged with neither assault nor resisting arrest."

Un-American Activities,[28/] that rule forbids any and all argument by counsel. Looking only to the face of the rule and ignoring the uncontested evidence and demonstration by the HUAC transcript that the rule was ignored in practice at the August 16-17 subcommittee hearings, the court concluded that appellant "had no standing to engage in legal argument in the first place," "was not entitled to present argument" (R. [op. 3]). Obviously, such a view could not but affect the court's determination whether appellant's persistence in his argument, and his method of presenting it, amounted under all the circumstances to disorderly conduct. If the view is wrong, appellant's conviction rests on legal quicksand and must be reversed.

The view is wrong. Portions of the record described in footnote 4 supra show without contradiction that the practice of allowing counsel who represented subpoenaed witnesses to approach the bench and be heard on motions and objections to the testimony of other witnesses was accepted by the subcommittee and explicitly recognized by its chairman. Attorney Gutman, indeed, related at least one incident when persistence in argument resulted in the change of a subcommittee ruling. Another such instance is shown by the HUAC transcript immediately following appellant's arrest and removal. Plainly, Committee Rule VII(B) was not, at these hearings, the sort of uniformly applied ban upon legal argumentation which the court below conceived it. The rule was simply a weapon in the hands of the subcommittee chairman, to be invoked or not invoked as he might arbitrarily think proper. No better description of its operation could be fashioned

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[28/] Rule VII of the House Committee on Un-American Activities provides:

> VII -- ADVICE OF COUNSEL:
>
> A -- At every hearing, public or executive, every witness shall be accorded the privilege of having counsel of his own choosing.
>
> B -- The participation of counsel during the course of any hearing and while the witness is testifying shall be limited to advising said witness as to his legal rights. Counsel shall not be permitted to engage in oral argument with the Committee, but shall confine his activity to the area of legal advice to his client.

than that which appears in Chairman Pool's reply to an objection by Mr. Kunstler that Chairman Pool was dealing improperly with appellant: "I will deal any way I want under the rules in this hearing." HUAC Transcript cited in footnote 4, at 1027.

Under these circumstances, appellant plainly had the right to address the subcommittee. Uncontroverted defense testimony shows that when appellant initially asked leave to do so, Chairman Pool nodded acquiescence. It is far from evident that the chairman could lawfully have refused to hear appellant at this point by turning Rule VII off and on at his "unbridled discretion." See Cox v. Louisiana, 379 U.S. 536, 557 (1965). But that issue need not be faced, because Chairman Pool did not in fact turn Rule VII on, or at lease did not announce to appellant that the Rule was suddenly turned on. Thus to entertain appellant's argument and thereafter to adjudge the supposed "disorderly" quality of his persistence in that argument on the legal premise that appellant "had no standing to engage in legal argument in the first place" (R. [op. 3]) is repugnant to the most rudimentary notions of constitutional fairness. It is just that "indefensible sort of entrapment" of which the Supreme Court spoke in Raley v. Ohio, 360 U.S. 423, 438 (1959).

But aside from appellant's right to function within the rules and practices of HUAC, it must be noted that appellant was then and there in litigation with the Committee. He was frankly seeking to have the Committee declared to be unconstitutional because among other things its continued course of conduct had demonstrated that it was not performing a proper legislative function. A decisive feature of this conduct is of course the Committee's practice of pillorying its enemies by the device of "friendly witnesses" whom it protects from cross-examination. Appellant's conduct, as he explained, was to make a clear record of that fact.

As we pointed out above (fn. 2), the Seventh Circuit in its opinion in Stamler v. Willis considered that the issues pressed by the appellant "raise a substantial constitutional question." Moreover, the disclosure during the debates of October 18 and 19, 1966, that witnesses before

HUAC were paid (supra, p. 17), makes it clear that appellant was functioning as a lawyer in the highest and indeed the most expert traditions of that profession, when he demanded the right of cross-examination.

B. A lawyer is privileged from ordinary criminal prosecution for things said in the midst of legal argument.

Since it is clear that appellant was functioning as a lawyer, it becomes necessary to consider the impact of this prosecution upon the privileges of the lawyer.

The most diligent research of counsel has failed to produce a single case in the whole history of Anglo-American jurisprudence where a lawyer was found guilty of ordinary criminal conduct for matters done or said in oral argument before a duly constituted tribunal.

On the occasions where the matter has been considered the courts have enunciated clearly that lawyers are not subject to such ordinary criminal prosecution.

As Lord Mansfield pointed out,

> "Neither party, witness, counsel, jury or judge can be put to answer civilly or criminally for words spoken in office." Rex v. Skinner, 98 English Reports. 529 (King's Bench, 1772), at 530,

quoted with approval by Cardozo, J., Andrews v. Gardiner, 224 N.Y. 440, 121 N.E. 341 (1918). Indeed, as Lord Mansfield pointed out in that case (involving indictment of a judge), "to go on an indictment would be subversive of all ideas of a constitution."

The considerations upon which these privileges of the attorney are based are the interest of society in the maintenance of an independent bar, the integrity of the adversary system of justice, and the continued functioning of the courts with the aid of attorneys.

These privileges, which are most often considered in contempt cases, emerge again in the field of libel, both civil and criminal. The rule of absolute privilege in respect to a lawyer's statements in court in civil libel cases is well known. Equally does the absolute privilege apply in criminal libel cases. As stated in Ange v. State, 98 Fla. 538, 123 So.

916 (1929), "no matter how false or how malicious such statements may in fact be," the words used by attorneys are privileged. See also People ex rel. Bensky v. Warden of City Prison, 258 N.Y. 55, 179 N.E. 257 (1932), where the court quoted with approval Munster v. Lamb, 11 Q.B.D. 588, 605, as follows:

> "No action of any kind, no criminal prosecution, can be maintained against a defendant, when it is established that the words complained of were uttered by him as counsel in the course of a judicial inquiry, that is, an inquiry before any court of justice into any matter concerning the administration of the law."

The privilege here at issue extends as well to legislative as to judicial procedures. Yancey v. Commonwealth, 135 Ky. 207, 122 S.W. 123 (1909).

The immunity of an attorney from prosecution for criminal libel has special significance for this case because criminal libel is premised on a threat of disturbance of the peace. Garrison v. Louisiana, 379 U.S. 64, 68 (1964); Beauharnais v. Illinois, 343 U.S. 250, 254 (1952). Despite this relationship between criminally libelous words and breach of the peace, a lawyer is protected from prosecution for his words.

It seems obvious on the face of it that if the privilege extends to the content of the words used, it must certainly encompass the tone of voice and the decibel level the lawyer uses. Viewed in this light, the efforts to subject Mr. Kinoy to criminal prosecution for disorderly conduct because of alleged loud and boisterous language in the very midst of an oral argument as an attorney is an indefensible assault upon the privileges, and indeed duties, of an attorney.

C. The process of controlling a lawyer through contempt is entirely different from and does not support a disorderly conduct prosecution.

Whatever may be the limitations upon an attorney as articulated in the contempt cases when his conduct is considered as intentionally obstructing the administration of justice, the disorderly persons statute and the criminal process has never been the framework within which such a question is to be considered. Again it is appropriate to refer to

Lord Mansfield, in *Rex* v. *Skinner*, *supra*. After emphasizing the absolute privilege from criminal prosecution he states: "If the words spoken are opprobrious or irrelevant to the case, the court will take notice of them as a contempt and will examine them on information" (at 530).

But the process of contempt is wholly different from the criminal process attached to the prosecution of a disorderly persons case. In the contempt process, it is the body before whom the alleged misconduct occurred which either controls or initiates the prosecution. And it is with full recognition of the availability of another remedy that the absolute privilege from a criminal prosecution (other than contempt)has been acknowledged.

To say that a lawyer is subject to controls through the contempt process is far different from saying that his conduct may be punished by the disorderly conduct procedure, and to argue, as in effect Judge Greene does, that the appellant is better off charged with disorderly conduct than with contempt is to overlook significant differences, both substantive and procedural.

### 1) The substantive differences between disorderly conduct and contempt.

Firstly, as we have already pointed out, a prosecution for contempt in respect to the conduct of a lawyer before a tribunal would have as a vital element of the offense a *mens rea*, including a finding that there had been an intention to obstruct the prosecution. At least as interpreted by Judge Greene in this case the application of the disorderly conduct statute required no finding of a specific intent to obstruct and he expressly stated as much.

Secondly, not all conduct which may be punished as a contempt of court is thereby disorderly conduct. The essence of contempt is obstruction or degradation of a court or other tribunal, *In re McConnell*, 370 U.S. 230 (1962), while the essence of disorderly conduct is the creation of danger of an immediate public disturbance or breach of the peace. The two disorderly conduct cases which Judge Greene cites in his footnote 10

(R. [op. 4]), State v. Sturges, 48 Mo. App. 263 (1892), and State v. Smith, 46 N.J. 510, 218 A.2d 147 (1966), do indeed present conduct that is traditionally disorderly in the sense of threatening an imminent breach of the peace and neither of these cases involve a lawyer presenting an argument. Nothing remotely resembling breach of the peace could be found in appellant's case. Absent some showing of conduct calculated to lead to breach of the peace (such as, for example, the sorts of extreme conduct supposed in footnote 18 of Judge Greene's written opinion, R. [op. 11]), appellant's conviction of a disorderly offense is unsupportable.

Thirdly, a crucial difference between contempt and disorderly conduct proceedings in respect to conduct before a legislative committee is that there are congressional safeguards against contempt proceedings of which an attorney charged with disorderly conduct is stripped, and the "chilling" danger of penalty for vigorous advocacy is immeasurably increased when responsibility for prosecuting the lawyer is split between the subcommittee chairman (who merely considers the lawyer's conduct objectionable but not requiring action) and a court (which holds it criminal) and relies for its findings exclusively upon the testimony of police officers who attended the sessions.

The Court may take judicial notice of the fact that there was a substantial debate on the floor of the Congress immediately following the incident involving appellant in which members of Congress expressed their concern with the manhandling of the appellant (Congressional Record, August 17 and 18, 1966, pp. 18831, 32, 33, 19038, 39, 40). The Court may also note the debate on October 18 and 19, 1966, referred to above, in which members of Congress expressed their serious concern with the matter of the Committee's non-compliance with its own rules as well as the question of the payment of witnesses. It seems clear enough that the Congress as a body does not believe appellant's conduct to have been contemptuous; it has not taken a single step in the direction of prosecuting appellant. By trying the defendant through the criminal process he is stripped of his political safeguards.

We need no better advocate of the importance to the defendant of this protection than the court below. Judge Greene acknowledged that it was not likely that appellant would be prosecuted for contempt (R. [op.5]). By a remarkable tour de force he converts this into an argument as to why he should stretch the unlawful assembly statute to cover incidents clearly beyond its intended scope, instead of leaving the matter to Congress to determine.

2) The procedural differences between disorderly conduct and contempt.

The procedural differences between contempt and disorderly conduct have extraordinary significance because they concern themselves not only with the rights of the defendant, but as well with the rights of the separate governmental units and the prevention of unseemly interference with each other.

We note that in Rex v. Skinner, supra, Lord Mansfield expressed not merely the substantive privilege of an attorney not to be prosecuted for crimes, but also a basic procedural and jurisdictional limitation. If, as he stated, contempt is the proper procedure, then its enforcement must be determined or at least initiated by the offended body.

This procedural difference is vital to the defendant. For one thing, the risk of error is greatly increased where guilt is tried in another forum, particularly where as here the second forum ignores the official record made at the first forum and relies on bystander testimony. A judge or committee before whom an attorney appears knows whether the attorney's conduct passes bounds of reason in the sense of persisting after there is no real likelihood that the judge or committee will change his or its mind. Another judge must speculate about this, as Judge Greene does in this case, and thereby increases not only the risk of error, but the ensuing risk that vigorous advocacy will be improperly curbed. An attorney can calculate to some extent the temper of the judge or committee before whom he is arguing, and he knows that if he succeeds eventually in convincing the judge or chairman of his point, he is unlikely to be held in contempt by reason of some abrasiveness in mid-course of the colloquy. He has no such assurance as to the view which a second forum will take of his conduct when he is interrupted in mid-course by arrest.

Of course in this record it is clear that Chairman Pool had not the slightest intention of invoking formal proceedings and indeed asked for the return of appellant (fn. 9 supra). Judge Greene nowhere mentions that fact and therefore is in a position of clearly making a determination that the Committee was offended when the Committee gave every indication that it was not offended to the point of believing that proceedings should be brought.

From the point of view of the tribunal involved in the alleged contempt, it may be noted that the whole system of contempt in respect to legislative bodies shows that any proceeding against an allegedly contumacious individual is intended to require initiation or determination by the entire legislative body. Where the Congress calls upon the judicial branch of the government to act, as, for example, under 2 U.S.C., Sec. 192, the proceeding is based not upon a request by an individual Congressman, or even a committee; it requires a resolution of the House of Representatives forwarded to the executive branch of the government calling upon it to initiate the prosecution. And if the legislature invokes its own built-in contempt power (as in Anderson v. Dunn, 19 U.S. 204 (1821)), its exercise is based upon action by the entire body.

All of this is short-circuited by the neat device of a prosecution under disorderly conduct, with the charge being brought by a deputy marshal and tried by a judge, neither of whom has responsibility to the legislative body. This poses an enormous issue in the area of separation of powers which we shall deal with as a separate point.

We do not urge that the contempt power exercised directly by a tribunal claiming to be offended is a necessarily superior method of resolving issues of allegedly improper conduct before it. The thrust of our argument is, however, that without at least some initiation of the proceedings by the allegedly offended body, another tribunal may not act, and that if it does, the risk of error is indeed greatly increased, as this case demonstrates.

## VI.

## APPELLANT'S PROSECUTION INVADES THE FUNCTIONS OF CONGRESS.

Appellant's prosecution was undertaken not only without authority of the subcommittee before which he appeared, but without authority of Congress in any form. An attorney before a legislative investigating committee, he was literally snatched up in mid-argument and made to answer for that argument in the courts. Such a procedure intrudes the judiciary into the workings of the legislative branch and fundamentally affronts the separation of powers assured by the Constitution.

The court below thought it doubtful that appellant "has standing to raise this issue" (R. [op. 9]). There can be no doubt. It would be a rather startling proposition that a criminal defendant, his liberty and property in jeopardy under criminal prosecution, had no standing to complain that the criminal court lacked power over his case. The Supreme Court has held squarely against such a proposition in a case where a state court sought to intrude into the domain of the federal legislative branch, In re Loney, 134 U.S. 372 (1890), and there is no reason to suppose that absence of federal judicial power is any the less challengeable, so far as standing goes, than absence of state power. Other separation-of-powers contentions have been heard at the instance of private individuals affected by the exercise of the challenged power. E.g., Schecter Poultry Corp. v. United States, 295 U.S. 495 (1935); Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952). And this is no anomaly. Separation of powers is not the prerogative of each of the branches of government, but a guarantor of individual liberty. "The doctrine of the separation of powers was adopted by the Convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was, not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy." Mr. Justice Brandeis, dissenting, Myers v. United States, 272 U.S. 52, 293 (1926). See also South Carolina v. Katzenbach, 383 U.S. 301, 324 (1966). If appellant is correct in his contention that the conduct for which he was prosecuted in the courts lies within the exclusive domain of Congress, he must be allowed to raise the point against conviction. No other forum for its vindication is available. It is hardly a matter for direct dispute between Congressmen and judges.

We suppose that the legislature has the power to determine for itself how it wishes to conduct its proceedings on committee meetings and is not required to conform to the notions of some deputy marshals or a member of the judicial branch of the government. The importance of Congress's exercising its own determinative power on these matters and the standing of the individual to assert in his defense that Congress should have acted appears in Judge Leventhal's opinion in the case of United States v. Allen, ___ F.2d ___ (D.C. Cir. 1966). In that case a conviction of contempt was reversed merely because it appeared that the file had been forwarded by the Speaker of the House to the Department of Justice upon the assumption that such forwarding was mandatory and that the Speaker had not exercised any discretion to determine whether in fact the Congress believed the conduct to be contumacious. (In that case, the House being in recess, the Speaker is considered "the cognizant officer of the House.") A fortiori is that the case here where there has been no action by the legislative body, not even routine or "mandatory" action.

On the merits, it is vital to recall what this case does and what it does not involve. It involves an attorney hauled into court to answer criminally for the tenor and duration of his argument before an investigating committee of the Congress. It involves an attorney seized in mid-sentence of that argument: "Mr. Chairman, let the record show. . . ." It involves his conviction on the explicit ground that he failed to meet standards for legal argument adumbrated by the court below. No authorization by Congress was given for this prosecution. Not the House, nor the Committee, nor the subcommittee, nor the subcommittee chairman approved it. No member of the subcommittee was the complainant.

The case does not involve any charge of action by appellant other than legal argument. The charge is that the argument was too loud or too long. Only by an exercise of fine judgment as to how well or how coarsely he did his lawyer's work before the subcommittee is his conduct distinguishable from what was plainly a part of the regular process of the committee hearing itself. For the House Committee on Un-American Activities has recognized that counsel has some role in its investigative proceedings. The role may be narrower than that of an attorney in court, but the nature of the issues which have characterized litigation concerning the Committee emphasizes that lawyers do in fact have a part in these hearings.[29/] Rules VII and VIII of the Committee formally notice that part. The record in the present case shows that attorneys are heard, and that sometimes they affect the subcommittee's determinations (see fn. 4 supra). Appellant was attempting to do just that, and the committee permitted him to begin. To confound this case with one of a drunken spectator at a congressional hearing, or of a spectator or even an attorney committing an assault in the course of the hearing,[30/] is to ignore reality entirely.

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[29/] Whatever may be the role of counsel before other congressional committees, counsel before this Committee performs an indispensable role. In the 21 years of HUAC's tenure it has cited for contempt more witnesses than all the other congressional investigating committees combined. When such contempt citations are reviewed judicially, the vigilance of counsel before the Committee may well determine his client's guilt or innocence. For example, his failure to object to the absence of a quorum (cf., Christoffel v. United States, 338 U.S. 84 (1949)), or lack of pertinency of questions (Watkins v. United States, 354 U.S. 178 (1957)). or lack of authority of the subcommittee to proceed to the particular subject matter (Gojack v. United States, 384 U.S. 702 (1966)), or the improper refusal by the subcommittee of the right to be heard in executive session (Yellin v. United States, 374 U.S. 109 (1963)), may foreclose an effective defense to the contempt charged.

[30/] See footnote 18 of the written opinion below (R. [op. 11]).

The case does not involve a reference to the courts by Congress of any function in assisting or implementing the congressional investigative proceeding. Congress has called upon the courts for this purpose where it has felt their aid needed -- the most obvious example is the statute, REV. STAT. § 102, as amended, 2 U.S.C. § 192 (1964), authorizing prosecution of recalcitrant witnesses -- but it has not called upon them to adjudge the character of the presentations of counsel before its committees. Nor has the House Committee on Un-American Activities or its subcommittee, generally or in appellant's case, invoked the aid of the courts, as conceivably it might do under Rule VIII. With all deference, when the court below wrote that its process was "an essential aid to its [the Legislature's] orderly operation" (R. [op. 10]), it was expressing its own view of what aid Congress needed, not Congress's.

Finally, this case does not involve the power and obligation of the courts to intervene in congressional investigative proceedings to protect specific constitutional rights of citizens or ward them against legislative abuse. In such a case, judicial intrusion would be warranted to enforce the Constitution's limitations on the legislative branch. No such warrant for interference with Congress appears here. All that appears is that a Deputy United States Marshal believed the courts a more appropriate forum than the Congress to determine whether an attorney arguing before the latter had gone too far.

The potential for unjustifiable judicial disruption of Congress in this sort of proceeding is obvious. Legislative hearings by nature deal with political and controversial issues. In fact, the theoretical basis for most legislative hearings is that Congress is gathering facts upon which to base legislation. Witnesses and lawyers frequently are contributing testimony or arguments which may be distasteful to particular persons. Often enough such persons are either on the executive or judicial branch of the government.

Suppose a witness before a congressional committee loudly denounces the John Birch Society and a law enforcement officer does not appreciate such denunciation. Is he empowered to whisk away the witness and lodge a charge of "loud and boisterous talking"? Or let us suppose the committee is investigating the conduct of the office of the U. S. Marshal, or possibly that of judicial tribunals. Is the committee to be at the mercy of the executive or the judicial branch of the government on the matter of such elementary questions as the conduct of counsel or witnesses?

But we need not go beyond the record of this case to furnish examples of the disruption of congressional functioning inherent in an assertion of judicial authority to review by criminal process the performance of participants in a legislative hearing. We have shown from the record that after the marshals had removed appellant from the hearing room and decided -- with no direction whatever from any legislative officer -- to charge him under the disorderly conduct statute, Chairman Pool in fact ordered appellant returned so that the hearing might resume. By this time, the onset of regular criminal procedure had set in, however; appellant had been taken from the building in a police van; he could not be returned; in short, the committee had entirely lost control over him. No tribunal could function if it were to lose power over its advocates -- indeed, lose them bodily -- whenever in the judgment of some person willing to swear out a warrant, an advocate overstepped lines of propriety that had to be adjudged, willy-nilly the tribunal, in some other forum.

This consideration doubtless explains why the present case is unprecedented and why there does not appear to be a single reported instance of alleged misconduct of counsel in the course of argument punished as disorderly conduct, -- though, of course, there are innumerable cases where such misconduct was proceeded upon by contempt. See Gallagher v. Municipal Court, 192 P.2d 905, 31 Cal.2d 784 (1948), and the numerous cases cited therein. Steps taken to censure the conduct of counsel in oral argument have always involved an initial determination by the body before whom counsel appears. This is as it should and as it must be. We submit that any control of a lawyer's conduct in the midst of oral argument must necessarily start with a determination by the body before whom the lawyer is arguing that his conduct needs to be controlled. To ignore this basic proposition is to attack the ability of the affected body to control its own proceedings. No court has jurisdiction to assert itself in this area without a prior determination by the body concerned. In the context of relationship between the Legislative and Judicial branches of the government this limitation of jurisdiction cannot be overridden without affront to the most rudimentary principles of constitutional separation of powers.

## VII.

## APPELLANT'S CONVICTION SHOULD BE REVERSED BECAUSE HIS PROSECUTION VIOLATES RULE VIII OF THE HOUSE COMMITTEE ON UN-AMERICAN ACTIVITIES.

Rule VIII of the House Committee on Un-American Activities provides:

> VIII -- CONDUCT OF COUNSEL:
>
> Counsel for a witness shall conduct himself in a professional, ethical and proper manner. His failure to do so shall, upon a finding to that effect by a majority of the Committee or Subcommittee before which the witness is appearing, subject such counsel to disciplinary action which may include warning, censure, removal of counsel from the hearing room, or a recommendation of contempt proceedings. (Emphasis added.)

It is plain that appellant was removed from the hearing room, charged and prosecuted in violation of Rule VIII. No one contends that "a majority of the . . . Subcommittee" found his conduct improper. Chairman Pool unilaterally ordered his removal, and the marshals charged him. This violation of the committee's rules compels reversal. Yellin v. United States, 374 U.S. 109 (1963); Gojack v. United States, 384 U.S. 702 (1966).[31]

The court below took the view that appellant "was not 'counsel' within the meaning of Rules VII and VIII" (R. [op. 3] n. 4), that he

---

[31] Chairman Pool was by no means unaware of this requirement of the Rules. On a number of previous occasions in the course of these hearings he polled his colleagues before taking action. See HUAC Transcript, cited in fn. 4 supra, e.g., Mr. Pool polled the committee on Mr. Pemberton's motion to stay its proceedings (p. 921). He likewise polled them on Mr. Donner's motion to suppress the lists acquired from the universities (pp. 923-924).

"had no standing to engage in legal argument" (R. [op. 3]) because the "committee's rules provide no role whatever for one who . . . represents someone other than the witness on the stand" (ibid.). On the face of the rules, this is wrong. Rule VII(A) provides without qualification that "At every hearing, public or executive, every witness shall be accorded the privilege of having counsel of his own choosing." Rule VII(B), note 28 supra, delimits the functions of counsel while his client is testifying but nowhere suggests, as the court below thought, that counsel is any the less "counsel" or a subpoenaed witness any the less a "witness" when the witness is not on the stand. Indeed, the specification in Rule VII(B) of certain limitations on "the participation of counsel" during the period "while the witness is testifying" is inconsistent with the theory that counsel is "counsel" only during this period. It is undisputed that appellant represented two witnesses compelled by subpoena to attend and give testimony at the August 16-17 hearings. He was thus "counsel" for these witnesses within the rules. Even were the rules less clear in terms than they are, the committee's practice, established by the record below, is conclusive. The subcommittee did in fact hear counsel for witnesses not presently testifying and had established a procedure for entertaining their objections. This practice refutes any notion that lawyers such as appellant had "no role whatever" and were "not 'counsel.'" As we have pointed out above, any post facto denial to appellant of the role which the subcommittee allowed him at the time of the hearings would be an "indefensible sort of entrapment." Raley v. Ohio, 360 U.S. 423 (1959).

Because no determination by a majority of the subcommittee as required by Rule VIII was made at any time, appellant's "removal . . . from the hearing room" was illegal. It is uncontestable that, without a majority vote of the subcommittee, appellant could not have been brought before the bar of the House and held in contempt for his conduct during argument. A passage in United States v. Miller, 152 F. Supp. 781, 788 (D.D.C. 1957), rev'd on other grounds, 259 F.2d 187 (D.C. Cir. 1958), holds that in such matters the majority of a subcommittee may act by silent acquiescence, but that decision was overruled by theSupreme Court in Gojack v. United States, supra. It can hardly be supposed that what could not be done consistently with Rule VIII under the "contempt" label can be done by changing the label to "disorderly conduct" and changing the forum to the courts. Of course, if an attorney before the committee committed an assault or a robbery or engaged in some other criminal conduct not consisting solely of acts in the course of his professional role at a hearing, he could be charged and prosecuted without the procedures indicated in Rule VIII. Cf. footnote 18 in the written opinion of the court below (R. [op. 11]).Rule VIII has nothing to do with such acts, since the rule's purpose and its limited scope touch only the propriety of counsel's professional conduct as such. But that conduct is all that is the basis of the prosecution in this case; Judge Greene's opinions below make crystal clear that he in effect convicted appellant of contempt of Congress; nothing is involved here but what Rule VIII was specifically designed to cover; and non-compliance with the rule bars this prosecution under the doctrine of the Yellin and Gojack cases, supra.

## CONCLUSION

With deference, we urge this Court's attention to the utterly destructive consequences for the Nation's most fundamental civil liberties of the ruling below: -- that a lawyer may be taken up and held guilty of a disorderly offense whenever, in some undefined and indefinable sense, his advocacy goes too far. There is no blinking the fact that this is what the court below held. When a lawyer presses his point, "There are limits; and in each individual case it is the duty of the trier of facts to determine whether or not the limits of the permissible were transgressed" (R. [op. 5]). This impressionistic, post hoc. case-by-case judgment is the standard of criminal accountability: on the one side of this line lies "not only the privilage of an attorney [but] . . . his duty" (ibid.); on the other lies his guilt of crime.

We do not argue that attorneys are not subject to controls. But the controlling mechanism that has been developed over the centuries of the emergence of our Anglo-American judicial system has been adequate and understood. In an unprecedented ruling the lower court has sought to devise an entirely new type of control. To do that, the lower court has flagrantly misread the statute under consideration; has ignored basic constitutional guarantees of due process, and fair notice, and rights of speech and advocacy; has invaded the province of the legislature; and has assumed upon the advice of some deputy marshals to decide upon what was proper conduct before a congressional committee when neither the Committee nor the Congress has acted.

The inhibiting and repressive pall, the "chilling effect," as the Supreme Court characterized it in Dombrowski v. Pfister, supra, which this sort of jeopardy throws upon the lawyer as advocate, is truly terrifying. The effect of what was held below is that every attorney must fear for his personal safety if the vigor of his argument is such that some subsequent "trier of the facts," applying vague, incalculable standards may believe -- perhaps on the basis of antagonistic bystanders' testimony, as here -- that "the limits of the permissible were transgressed." Human nature is not so strong that, under pressures such as this, vigor will continue unabated. We submit upon controlling authority, supra, that the Constitution brooks no such crippling impairment of the lawyer's role.

The judgment of the court below should be reversed, and a judgment of acquittal should be entered.

Respectfully submitted,

ANTHONY G. AMSTERDAM
3400 Chestnut Street
Philadelphia Pennsylvania 19104

PHILIP J. HIRSCHKOP
1025 Vermont Avenue, N.W.
Washington, D.C.

MORTON STAVIS
744 Broad Street
Newark, New Jersey 07102

KUNSTLER KUNSTLER & KINOY
ATTORNEYS AT LAW
511 FIFTH AVENUE
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MURRAY HILL 2-8317

WILLIAM M. KUNSTLER
MICHAEL J. KUNSTLER
ARTHUR KINOY
STEVEN J. HYMAN

CABLE ADDRESS
"KANDKLEX"

SEP 1 - 1966

August 31, 1966

Carl Rachlin, Esq.
165 West 46th Street
New York, N. Y.

Dear Carl:

It is moving and gratifying to know that the civil rights organizations with which Professor Arthur Kinoy has worked are taking the leadership in organizing protests concerning the un-American and unconstitutional treatment of an attorney while defending a client before the House Committee on Un-American Activities.

I assume that since Jan Goodman did not hear from you to the contrary, Mr. McKissick has agreed to join with Dr. Martin Luther King, Jr., Lawrence Guyot, and Stokely Carmichael in signing a letter to be sent to leaders of civil rights, civil liberties and peace organizations, urging them to join an Arthur Kinoy Defense Committee.

Attached is a copy of the letter and copies of newspaper articles and editorials concerning this case.

I will telephone you tomorrow to make arrangements to pick up a facsimile of Mr. McKissick's signature.

Many thanks for your help.

Sincerely yours,

Susan K. Kinoy

(Mrs. A.) Susan K. Kinoy

SKK:1
enclosures

KUNSTLER KUNSTLER & KINOY
ATTORNEYS AT LAW
511 FIFTH AVENUE
NEW YORK, N. Y. 10017

MURRAY HILL 2-8317

Sept. 1, 1966

Dear Carl:

Attached is a Xerox copy of original letter which, as you can see from the address, was misdirected. I am therefore enclosing another set of the papers.

Susan
Susan

---

Make a new file
Kinoy adv
D. of C.

STAVIS, RICHARDSON, KOENIGSBERG & ROSSMOORE
COUNSELORS AT LAW

MORTON STAVIS
MABEL L. RICHARDSON
SAMUEL M. KOENIGSBERG
WILLIAM ROSSMOORE

744 BROAD STREET
NEWARK, N. J. 07102

AREA CODE 201
622-3789

SEP 2 - 1966

September 1, 1966

Carl Rachlin, Esq.
165 West 46th Street
New York, N. Y.

Re: District of Columbia v. Kinoy

Dear Carl:

I am arranging to have a copy of the brief in the above matter sent to you. Argument is going to be had on September 9th. Would you please let us know by Septemb er 7th whether you wish to join with others in the designation "Of Counsel on the Brief"?

Sincerely yours,

Morton Stavis

MS:mbt

September 1, 1966

Lester Greenberg, Esq.
American Jewish Congress
15 East 84th Street
New York, New York 10028

Dear Lester:

Finally, I had a chance to go over the affidavits in the Galamison matter. They are very good and I am sure very useful. I wonder what your views are on having a meeting to decide whether there is anything to be done either legally on in a non-legal manner. Perhaps we ought to have a meeting of the groups involved to solicit their opinions.

With warm regards to yourself and to Joe.

Sincerely yours,

CR:tp

Carl Rachlin
General Counsel

September 7, 1966

Mrs. Arthur Kinoy
c/o of Kunstler, Kunstler & Kinoy
511 Fifth Avenue
New York, New York 10017

Dear Susan:

Thank you for your letter of August 31st with the enclosures. I just have several very minor thoughts. One, Floyd McKissick is National Director of the Congress of Racial Equality - not Chairman and I hope there is still time to correct that. In addition, on the second line of the letter I think it is superfluous and may lead to extraneous discussion when you have the word as friends and clients of Prof. Arthur Kinoy. The words "and client" are really quite irrelevant to the whole matter and may raise a factual question as to whether some of the people sign the letter or such not that I see no useful purpose for having those words there. Certainly the issue does not depend on people signing this letter being clients but people who are concerned about the problem.

I also told Jan I thought that Mr. Randolph should be asked to sign this letter as well. You might consider that.

With warm personal regards to you and ARthur.

Sincerely yours,

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Chairman, ERNEST ANGELL; Vice Chairmen, DOROTHY KENYON, WALTER MILLIS, DAN LACY; General Counsel, EDWARD J. DENNIS, OSMOND K. FRAENKEL; Secretary, GEORGE SOLL; Treasurer, SOPHIA YARNALL JACOBS.

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October 14, 1966

Mr. Carl Rachlin
150 Nassau Street
New York, New York

Re: District of Columbia
v. Arthur Kinoy

Dear Carl:

On September 29, 1966 Judge Harold H. Greene overruled our motion in arrest of judgment. A copy of his opinion is enclosed.

An appeal to the District of Columbia Court of Appeals has been filed and our brief will be due November 9. We would be most grateful for any suggestions you may have for meeting the points made in the opinion.

We are enclosing a preliminary analysis of the opinion, representing the work of Tony Amsterdam, Louis Lusky, Morton Stavis and myself. The most significant points of the analysis as we see it now are the following:

1. The opinion's cavalier treatment of the facts.
2. The failure to define precisely the crime of which Professor Kinoy was charged and convicted.
3. Judge Greene's own interpretation of the HUAC rules and conclusion that the defendant had no status as an attorney at the time of the incident in question (Opinion, pp. 2-5).
4. Judge Greene's misstatement of our position as to whether the defendant's conduct could have been punished as a contempt of Congress (Opinion, pp. 6,8).
5. Judge Greene's misconception of our contention as to the prosecution's chilling effect on the conduct of lawyers (Opinion, p. 5).

Washington Office: 1101 Vermont Avenue, N.W., Washington, D.C. 20005; Lawrence Speiser, Director; Mary O'Melveny, Executive Assistant
Southern Regional Office: 5 Forsyth St., N.W., Atlanta, Ga. 30303; Charles M. Morgan, Jr., Director
With organized affiliates in 34 states and 800 cooperating attorneys in 50 states.

150

6. The constitutional separation of powers question and our standing to raise it.

7. The major constitutional question of specific intent.

We earnestly solicit your suggestions, in such time as will permit us effectively to incorporate them in a draft of the brief, and we of course intend to submit the draft to you before it is filed. Accordingly, could you let us have your comments, if any, by October 25.

Very sincerely,

Jack

John de J. Pemberton, Jr.
Executive Director

JdeJP"dr
enc.

Columbia University in the City of New York | *New York, N.Y. 10027*

SCHOOL OF LAW

435 West 116th Street

December 6, 1966

Carl Rachlin, Esq.
150 Nassau Street
New York, New York

Dear Carl:

This is a further report on Arthur Kinoy's appeal of his disorderly conduct conviction, and an invitation to join in an amicus brief to be tendered on December 16, for filing in the Municipal Court of Appeals of the District of Columbia.

The appeal is to be argued by Anthony G. Amsterdam and Morton Stavis. As you know, they also argued the motion for arrest of judgment in the trial court. They have prepared a strong brief, with the aid of suggestions from others who signed or adhered to the trial court brief. The time for filing it has been extended to December 16.

On reading their brief, some of us who signed the trial court brief formed the opinion that, at this stage of the case, we could present our views most effectively by offering a short amicus brief emphasizing the broader implications of the case, rather than by simply adding our names to the brief of appellant. I have written a draft of such an amicus brief, and enclose it herewith. Also enclosed is a copy of appellant's brief, to which the amicus brief refers.

You are invited to join with me in signing the amicus brief. You are also invited to suggest improvements in my draft; and I am sure that Messers. Amsterdam and Stavis would appreciate any suggestions you have with respect to theirs. (Both briefs are to be submitted in typewritten form, so that changes can be made -- and signatures to the amicus brief can be added -- down to about December 14; but it would be more convenient to have them sooner.)

This invitation is going to the several lawyers, law teachers and law deans who associated themselves with the trial court brief, and to a few others who also indicated agreement with it but who (for reasons such as absence on vacation) did not join in it.

I hope you will authorize me to add your signature to the amicus brief. If you wish to do so, please return the enclosed postcard to me at your early convenience.

Sincerely yours,

Louis

Louis Lusky
Professor of Law

Encls.

December 12, 1966

Mr. Louis Lusky
Professor of Law
Columbia Law School
New York, N.Y. 10027

Dear Professor Lusky:

RE: ARTHUR KINOY ✓

Your letter of December 6th was delayed in reaching me until today so that I have not had a chance to read over your brief for the purpose of making any suggestions. You have my authority to use my name immediately but I'll try to read the brief to see what, if any, suggestions I can make.

Cordially,

Carl Rachlin
General Counsel

CR:gtc

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January 12, 1967

To: Persons who signed the
Amicus Brief
Kinoy v. District of Columbia

We are indeed grateful to you for joining in the brief amicus curiae in support of Arthur Kinoy's appeal from the judgment of conviction in General Sessions Court in the District of Columbia. I enclose a copy of that brief and, in addition, a copy of the brief on behalf of the appellant of which you saw an earlier draft. These briefs were filed, after a second extension of time was obtained, on December 27, 1966. We have a few extra copies of each brief. If a large number of additional copies are required, they will be re-run and distributed at cost.

The appellee has moved for an extension of time until and including January 30, 1967. We shall write again when we have more to report.

I am personally pleased to be associated with you on this excellent amicus brief, as well as encouraged by the prestigious support it represents for the principle we all believe to be at stake.

Very sincerely yours,

Jack Pemberton

John de J. Pemberton, Jr.
Executive Director

JdeJP:bk
Enclosures

ROOM 1013 511 FIFTH AVENUE NEW YORK CITY 10017

September 1966

Dear Friend:

As leaders of organizations dedicated to the attainment of equal rights for the Negro citizens of this country and as friends and clients of Professor Arthur Kinoy, we want to voice our profound outrage at the violent treatment he recently received while representing a client before the House Un-American Activities Committee. While his unprecedented expulsion, arrest and conviction for discharging his professional responsibilities would have been just as disturbing had they occurred in a southern courtroom, they are somehow more shocking for having taken place before a committee of the Congress in the nation's capitol. This is the southern-dominated committee which continues to trample upon the constitutional rights of all citizens.

We regard Mr. Kinoy's removal from the hearing room as a most flagrant denial of the Constitution's guarantee of the right to counsel. Since the civil rights movement has been intimately involved with the courts for more than a decade, we are particularly conscious of the absolute necessity that lawyers be free to represent their clients without being subject to terrorization or intimidation.

Both because of our recognition that an independent bar is a protection for all Americans and our long acquaintance with Mr. Kinoy and his devotion to the highest traditions of his profession, we have joined together to add our collective protest against the unconceivable brutality practiced upon him. We call upon every person concerned with the attainment of equal civil rights for all to take every necessary action to obtain the reversal of Professor Kinoy's unjustified conviction and insure that such a violation of the Constitution can never again occur.

Accordingly, we ask you to join with us in establishing an ARTHUR KINOY DEFENSE COMMITTEE. This Committee will be devoted solely to bringing the facts of this outrage to the attention of the American people, and will call on individuals and organizations to express their views on this grave situation.

If you would care to join with us please sign the enclosed authorization card. As soon as the ARTHUR KINOY DEFENSE COMMITTEE is established we will keep you informed on all its plans.

Sincerely yours,

Stokely Carmichael, Chairman
Student Non-Violent
Coordinating Committee

Martin Luther King, Jr., President
Southern Christian
Leadership Conference

Lawrence Guyot, Chairman
Mississippi Freedom
Democratic Party

Floyd McKissick, Chairman
Congress of
Racial Equality

## PRELIMINARY ANALYSIS OF
## OPINION OF JUDGE HAROLD GREENE

KINOY

### I.

The most salient feature of the opinion is that Judge Greene has premised his factual findings exclusively upon the testimony of the deputy marshals. He ignores completely the official transcript of the proceedings before HUAC. There is not even a mantion of the fact that there was testimony from a number of members of the Bar, including Jeremiah Gutman, John Pemberton, and William Kunstler, establishing the propriety of Professor Kinoy's conduct. The Court does not state that it disbelieves either the transcript or these witnesses; it simply ignores them.

A few comments upon the facts are appropriate:

a) The entire record of what transpired before HUAC, until Professor Kinoy was removed, follows:

> Mr. Kinoy: Mr. Chairman, I would like to be heard on that motion, and I also am an attorney for Mr. Teague. Do I understand that it is the ruling of this committee that the fundamental right of cross-examination is not to be accorded to witnesses who are called before this committee when the committee is attempting to defame?
>
> Mr. Pool: You are arguing the question.
>
> Mr. Kinoy: Of course lawyers always argue questions. Mr. Chairman.
>
> Mr. Ashbrook: You didn't argue the question; you made a misinterpretation of fact when you said we are endeavoring to defame something. He is totally out of order, Mr. Chairman. Such is not the case.
>
> Mr. Kinoy: Mr. Chairman, that question will be settled in Federal Court whether you are attempting to defame witnesses.
>
> Mr. Ashbrook: You made it as a statement of fact, and as a lawyer you know you are absolutely wrong. You are out of place.
>
> Mr. Pool: The objection is overruled.
>
> Mr. Kinoy: May the record show we take a strenuous objection to your ruling.
>
> Mr. Pool: Now sit down. Go over there and sit down. You have made your objection. You are not going to disrupt this hearing any further.
>
> Mr. Kunstler: Mr. Chairman, you don't have to deal discourteously to an attorney in front of you. That is wholly un-American.
>
> Mr. Pool: I will deal any way I want under the rules in this hearing. I have just told him to be quiet and I ask you to sit down now.
>
> Mr. Kinoy: Mr. Chairman, let the record show -- don't touch a lawyer. Mr. Chairman --
>
> Mr. Pool: Remove the lawyer.

Mr. Kinoy: Mr. Chairman, I will not be taken from this courtroom. I am an attorney-at-law and I have the right to be heard.

It should be noted that no issue has been raised as to the accuracy of the transcript; moreover, no member or representative of the Committee testified in support of the prosecution or suggested that the transcript needed to be supplemented.

b) A detailed analysis of the Judge's single paragraph statement of the facts reveals its inaccuracies. These in fact begin with the Court's first sentence summarizing the facts:

> "On August 16, 1966 defendant's law partner sought to cross-examine a witness in contravention of the Committee's rules but was not permitted to do so."

Professor Kinoy's partner, Mr. Kunstler, made two objections on August 16, as he did on August 17: the first was to taking potentially defamatory testimony in open session and the second to taking his testimony without offering a right of cross-examination. Mr. Kunstler did not seek to cross-examine in any disruptive sense by way of interjecting such examination then and there; he was merely making the demand that such right be granted at some time. The August 16th objection was to the testimony of a different witness about a different client and the inference, which Judge Greene may have intended, that it was somehow improper to make the same objection on the next day, is inaccurate. The circumstances of the second witness's testimony (for example, whether that witness, like the first, had in fact already been heard in executive session) and the circumstances of the second name being drawn into testimony, were in no sense identical.

The second sentence asserts that Mr. Kunstler made the same request on behalf of another client on August 17th, "but again the request was denied in accordance with the Committee's rules." The denial of the objection to taking the testimony in public session presumptively violated the Committee's own rules and was not in accordance with them. And, in any event, the denial did not immediately follow Mr. Kunstler's statement of the objection; there was no ruling until after Mr. Kinoy spoke.

The third sentence says that Professor Kinoy "pursued the same request which had just been denied." After Mr. Kunstler stated his objection, Congressman Ashbrook moved that it be overruled, but the chairman did not rule on it until after Professor Kinoy had spoken and indeed had engaged in a colloquoy with Congressman Ashbrook.

The fourth sentence says that defendant's "effort was likewise rejected, but he persisted in his demand." Professor Kinoy's first sentence requested an opportunity to be heard. The only testimony as to what transpired then is Mr. Pemberton's, which was to the effect that he paused at the end of that sentence and that "the chairman nodded to give him approval that he might be heard." Of course the Court may be referring to the chairman's ultimate ruling on the objection, which followed Professor Kinoy's statement of it and his colloquy with Congressman Ashbrook. But if that is so, the persistence referred to in this sentence consists of one complete and one incomplete sentence uttered by Professor Kinoy after the ruling and prior to the laying on of hands of the marshals. The Court's formulation--particularly starting with the mention of Mr. Kunstler's raising the issue on the preceding day--seems calculated to leave the impression that Professor Kinoy was perhaps disorderly by the very fact that he rose to make a point which in some aspects had previously been made. This is directly contrary to the record.

The fifth sentence reads:

> "The chairman a number of times ordered defendant to stop, he repeatedly rapped his gavel to keep order, and he told defendant again and again to be seated--all to no avail."

This is contradicted by the HUAC transcript in every detail except for the gavel rapping which is not mentioned. Of course, there is testimony of marshals that tends to support the assertion of repeated directions to Professor Kinoy. But this can be reconciled with the transcript by reason of the fact that the single sentence order to Professor Kinoy contained the words "sit down" twice and was followed quickly thereafter by an order to Mr. Kunstler to sit down. The marshals could quite easily have been confused as to how many times the chairman ordered Professor Kinoy to sit down. However understandable might have been the marshals' confusion, it is difficult to understand how the Court could write this sentence when it had the transcript before it.

The sixth sentence asserts:

> "Defendant's voice increased in volume as he attempted to drown out both the chairman's voice and the gavel, and he failed to take his seat."

Of course the record is clear that he failed to take his seat. But careful reading of the testimony will fail to show substantial warrant in the evidence to support either a finding that his voice increased in volume or that he attempted to drown out both the chairman's voice and the gavel. In any event the HUAC transcript tends to refute the latter, for all of the colloquy is sufficiently responsive to indicate that all of the participants heard each other. It is particularly significant that Professor Kinoy was responsive, since it is difficult to hear what another is saying when one is attempting to talk loud enough to drown out what he is saying. The attempt would have been fatuous anyway, since all of the Committee members' voices were amplified electronically while Professor Kinoy's was not.

The seventh sentence reads:

> "Ultimately, after defendant had disregarded a final order to sit down, he was ordered ejected and was removed from the hearing room."

Not even the marshals who testified to repeated orders to sit down identified any such order as differing from the others in such a way as to be characterizable as "a final order to sit down." At no point, either in the testimony of the marshals or in the HUAC transcript, is there evidence that Professor Kinoy was given a warning. Of course, the HUAC transcript is quite clear: the chairman told him just once "now sit down. Go over there and sit down."

The last sentence reads:

> "Throughout this episode defendant was loud and boisterous and he continued to be loud and boisterous while he was being ejected."

The marshals did testify that Professor Kinoy was being loud and boisterous, both before and during his ejection. Loudness in the absolute sense may be uncontestable; his voice came through "loud and clear." But loudness in the context is clearly disputed by the testimony, and the marshals' testimony may be subject to the challenge that they offer a statement of conclusions, of an ultimate fact in the statutory language, rather than of evidentiary facts. The meaning of the adjective "boisterous' seems obviously inappropriate when used to describe the evidentiary facts developed either in the testimony or in the HUAC transcript.

c) To be contrasted to the Judge's factual statement is the testimony of John Pemberton which follows:

> Q. Were you present during the incidents involving Mr. Kinoy?
>
> A. Yes; I was present. At that time I was sitting in the front row of the audience where counsel and witnesses were seated.
>
> Q. Do you recall Mr. Kunstler rising to make an objection?
>
> A. I do recall his rising and making an objection.
>
> Q. And do you recall Mr. Kinoy rising to join in that objection?
>
> A. I racall Arthur Kinoy following Mr. Kunstler to the point where the attorneys were directed by the Committee to state their objections or motions, standing behind him and asking to be heard on the objection.
>
> Q. Will you state in your own words what transpired as best as you can recall?
>
> A. After Mr. Kunstler made his objection, which took a very brief period to state, one of the Committee members moved that it be overruled, and Mr. Kinoy asked the Chairman if he might be heard on the objection. He paused and, I think, the Chairman nodded to give him approval that he might be heard. He made about two statements or two sentences when Congressman Ashbrook, sitting to the left of the Chairman, interrupted and a colloquy or argument between Mr. Kinoy and Congressman Ashbrook took place. Approximately three sentences each were stated by the Congressman and by Mr. Kinoy, each responsive to the other.
>
> At this point--and I'm not sure whether it was following--I believe it was following a statement by Congressman Ashbrook--the Chairman announced a ruling, and it seemed to me that Mr. Kinoy responded to the last point made by Mr. Ashbrook or made--at least made another sentence after that ruling. The ruling was that the motion was overruled or that the objection was overruled.
>
> Following that one sentence by Kinoy, the Chairman told Mr. Kinoy to sit down and spoke to him quite forcefully; whereupon, Mr. Kunstler objected to the manner in which he spoke to Mr. Kinoy, and the Chairman then told Mr. Kunstler to sit down.
>
> Mr. Kinoy sought to make what seemed to me a concluding point for the record; perhaps, to the effect that "We haven't been heard" or something that I thought was going to conclude his effort to make a record on the objection that he had been trying to argue, because I clearly had the impression that he hadn't argued the objection; he had started the argument and then had been interrupted.

And by this time there were other people around him who, I learned from yesterday's testimony, were United States marshals; at least, two of whom I recognized: Mr. Bird and Mr. Hockman. And they put their hands on him. He made an objecting remark to them and then back to the Chairman, such as: "Don't touch me. Mr. Chairman."

And by this time they grabbed him and removed him from the room. Simultaneously with their grabbing him or just before--just afterwards the Chairman ordered him removed.

As he was being removed, he continued to object to being removed as a lawyer seeking to argue a point for a client, and the arm of one of the marshals went directly around his neck so that the one sentence he was able to get out was interrupted in the middle of that sentence with a strangulation sound. His voice was coming through clear and suddenly it was not coming through clear; it was a strangled voice.

In this position he was carried rapidly out of the room, the arm remaining around his neck as long as I could see, and that was the last I saw of him at that time.

Q. Now, were you present at the hearing a few minutes later when Congressman Pool asked that Mr. Kinoy be brought back in?

A. Yes. I was one of the attorneys who had, by that time, risen to demand his return.

Q. And was Mr. Kinoy returned?

A. No; he was not returned. The Congressman had ordered his return or his being brought back.

Q. Now, I want to get back to the period immediately before Mr. Kinoy's actual removal from the hearing room, and I would like you to describe, if you can, the level of Mr. Kinoy's voice as he made the legal arguments to which you are referring.

A. Well, it was the voice of a lawyer who has a strong voice, speaking in a room where he was not aided by a microphone adequately so that he could be heard in the room not only by the Chairman or the particular Congressman to which he was addressing his remarks, but by other Congressmen, witnesses, and lawyers who were involved, and I suspect he could be heard, maybe not necessarily distinctly, in the very back of the room. I was sitting in the front of the row of the audience and I could hear distinctly what he said. But the level of his voice was necessary so that--in order for me to be able to hear what he said. If it had been much lower, I could not.

Q. Now, you heard Mr. Kinoy argue in the preceding few days; had you not?

A. I had.

Q. Can you describe what courts you heard him argue in?

A. In the United States District Court for this District and in the United States Court of Appeals for this District.

Q. What days had he been arguing in those courts?

A. Monday in both courts. In the afternoon in the District Court; in the Court of Appeals in the evening.

Q. And could you tell the Court what relationship there was between the level of his voice in arguing before those two courts to which you refer and the level of his voice when he was making his legal arguments before the Committee?

A. I think you are referring to a remark I made to you that the one time I thought he became over-vehement in argument was in the District Court argument Monday afternoon. I thought his voice was too loud there. In terms of context it was louder then than it was in the Committee room.

THE COURT: It wasn't louder absolutely.

THE WITNESS: Not absolutely. In terms of context, yes. In short, the District Court room is a small room; the Committee room is a large room. A single District Court judge was listening to him. A large number of people were listening to him in the Committee room.

MR. STAVIS: I have no further questions.

THE COURT: Mr. King.

d) We need hardly labor the point, but almost any lawyer who has dealt with a controversial case has had at least the degree of conflict with an unsympathetic judge as is manifested in the HUAC transcript. Indeed, in the long history of the HUAC there have been many stormy sessions with counsel. In the almost 30 years of its exestence the Committee has never brought about the prosecution of a lawyer. Not a single one of the lawyers present during the incident involving Professor Kinoy imagined that his conduct was out of order or merited disciplinary action of any sort.

In this connection it is of special interest to note that (as we mentioned in our brief), a few moments after Professor Kinoy's removal, and as a result of colloquy between the chairman and other counsel present, Mr. Pool stated: "Bring the gentleman back in." As the testimony showed, Mr. Kinoy could not be returned because he had been arrested and detained at police headquarters.

Judge Greene simply ignores this. His entire handling of the facts reveals a disregard of the record and a misstatement of the record in many important respects. He ignores every bit of contradictory testimony, including the official transcript of the HUAC hearings, and seeks by his opinion to give the impression that there was no factual issue at all.

## II.

In respect to the nature of the offense with which Professor Kinoy was charged, Judge Greene's opinion is deficient in that it nowhere describes the legal offense of which he is found guilty, it nowhere identifies the statute or rule of law under which his conduct is adjudged an offense, and so leaves entirely unarticulated and unexplored what are the elements of the offense and how the proof supported a finding that each element was established. This want of definition is the more striking in that defense counsel at several stages have pointed out to the Court that the nature of the charge is uncertain, and response to it therefore unfairly difficult.

The closest the opinion comes to addressing the issue as to what charges are involved is in p. 1, n.1. An analysis of the Court's statement shows that the view taken of the charges is wholly unsupportable.

A. The note first says that Sec. 22-1107 "incorporates the common law concept of breach of the peace." There are several things wrong with this as a basis of conviction.

1) The cases cited do not begin to support it. None involves Sec. 22-1107. They are cases of embezzlement (Masters), murder (Hamilton), conspiracy to defraud the government (Tyner), etc. Each contains language to the effect that the common law of crimes endures and remains in effect in the District of Columbia unless "repealed by express statutory provisions, or modified by inconsistent legislation, or where it has become obsolete or unsuited to our Republican form of government," Tyner, 23 App. D.C. at 359 (where it is also noted that "much of the criminal branch of our common law has either become obsolete or has been obliterated by statutory enactment upon the same subject"). Each case then considers the specific criminal statute in issue there and finds that because its elements are the same as those of the offense at common law, common law principles, authorities or procedures apply. But Judge Greene does not examine Sec. 22-1107 in this light, and does not answer our contentions that the elements of Sec. 22-1107 differ from any common law of breach of the peace by requiring either (i) unlawful-assembly-like conduct (sub-sentence (2)), with the result that Sec. 22-1107 supersedes the common law and requires proof of elements not shown in Professor Kinoy's case. Such examination--particularly in light of a) the title of Sec. 22-1107, b) the ejusdem generis principle applied to the section in Jalbert v. District of Columbia, 221 A. 2d 94, 98 (1966), and c) constitutional considerations discussed infra--plainly supports our contentions which the Court leaves unanswered. In short, Sec. 22-1107 does not incorporate the common law concept of breach of the peace.

2) Judge Greene may be saying here that Professor Kinoy is charged with common law breach of the peace apart from Sec. 22-1107. We would not put this construction on the opinion, since it is flatly inconsistent with Judge Greene's language. In any event, if this is what is meant, it remains undemonstrated that common law breach of the peace survives enactment of Sec. 22-1107 and cognate provisions of the D.C. Code, within the principles of Tyner, supra, and like authorities. Plainly, Congress has punished disorderly conduct and breach of the peace in the District in a number of forms, and it is unimaginable that the common law should survive in addition to this complex and articulate regulation.*

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* There are three statutes dealing with disorderly conduct in the District of Columbia: 22-1107, 22-1121, the applicability of which was expressly disavowed by the prosecutor at the trial since that "has to do with breach of the peace" (Tr. 244); and 22-3111 which, as pointed out below, was never mentioned in or relied upon in this case until referred to by Judge Greene.

Moreover, any reliance on a common law charge apart from Sec. 22-1107 is vulnerable to the Ashton objection made immediately infra, and to the Cole v. Arkansas objection made further infra.

3) If Sec. 22-1107 incorporates common law breach of the peace, Sec. 22-1107 is unconstitutional, at least as applied to any conduct in the general area of protected speech or advocacy. In Ashton v. Kentucky, 384 U.S. 195, 200-201 (1966), the Supreme Court made clear beyond cavil that its prior decisions had condemned exactly this common law offense of breach of the peace under First Amendment vagueness principles. Cantwell v. Connecticut, 310 U.S. 296 (1940); Edwards v. South Carolina, 372 U.S. 229 (1963); Henry v. City of Rock Hill, 376 U.S. 776 (1964); cf. Cox v. Louisiana, 379 U.S. 536 (1965). That Professor Kinoy's conduct is within the general area of protected First Amendment speech and Sixth Amendment advocacy is plain, N.A.A.C.P. v. Button, 371 U.S. 415 (1963); Brotherhood of Railroad Trainmen v. Virginia ex rel Virginia State Bar, 377 U.S.1 (1964); Holt v. Virginia, 381 U.S. 131 (1965); thus, the unconstitutionality of common law breach of the peace as applied to him seems indisputable.

B. The footnote next says that if Sec. 22-1107 requires assembly, that requirement is met whenever an individual charged is disorderly in the presnece of others. This too has several problems.

1) The cited Morris case does not support it. That case sustained a conviction under the "indecent or obscene words" subsentence of Sec. 22-1107, not here involved, which has no assembly requirement. The phrasing of the two sections makes clear that they are disjunctive.

2) The assembly subsentence requires that one "congregate and assemble ... and engage in loud or boisterous talking." This is an absurd periphrasis to say simply that the offense must be committed in the presence of others. Rather, as the title of Sec. 22-1107 indicates, the section is concerned with conducting a disorderly assembly, not with being disorderly at someone else's assembly (even if "congregate and assemble" could conceivably be stretched to suggest a legislative committee hearing). This construction draws support from two additional considerations. First, Congress demonstrated in the second (profane language) subsentence of Sec. 22-1107 that it knew how to say explicitly "wherefrom the same may be heard" by another, when that is what Congress meant. Second, the requirement of "congregate and assemble" is conjunctive to the requirement of disorderly conduct under subsentence (1), and this is persuasive that it means more than merely conduct in the presence of others. Common law disorderly conduct alone required action in the presence of another, e.g., 3 UNDERHILL, CRIMINAL EVIDENCE 1912 (5th ed. 1957), and the addition of "congregate and assemble" must mean something more.

C. Finally, the footnote in its last sentence suggests that the charge against Professor Kinoy might be sustained under D.C. Code, Sec. 22-3111. This is untenable.

1) Sec. 22-3111 has never been in this case prior to the date of the Court's opinion. Not only did the prosecutor at trial expressly place exclusive reliance on Sec. 22-1107 (Tr. 244), but even the prosecutor's latter-day brief in opposition to our motion in arrest of judgment did not refer to Sec. 22-3111. Importation of Sec. 22-3111 into the proceeding after verdict obviously denies the first essential of a fair trial on specified charges. E.g., Cole v. Arkansas, 333 U.S. 196 (1948); Shuttlesworth v. Birmingham, 376 U.S. 339 (1964).

2) Under the authorities cited on page 7-8 of this analysis, supra, Sec. 22-3111 is plainly unconstitutional. A general charge of "disorderly and offensive conduct" in any public building is vague beyond all salvation.*

D. Lastly, it should be noted that apart from any other defects, Judge Greene incorrectly states that the common law offense of disorderly conduct prohibited loud and boisterous talking. In the Hoxey and Watkins cases cited, for example, more than loud and boisterous talking was involved. In Hoxey, defendant was alleged to have repeatedly attempted to remove ballots from a ballot box in a town meeting, and in Watkins, the allegation was that defendant used profane language. We have found no holdings that loudness alone is disorderly, or that disturbance of a meeting by nothing more than loud talk is disorderly.

Most of the points here made relating to the construction and constitutionality of various disorderly conduct statutes were advanced before Judge Greene as the basis for a holding that Professor Kinoy's conduct violated no statute or rule of criminal law and that, if any applicable statute or rule were construed as embracing his conduct, that statute or rule was unconstitutional. Judge Greene ignored these arguments altogether. He summarizes our contentions--unfairly, we believe--as amounting to the proposition that Professor Kinoy's conduct can be reached only by contempt, not disorderly conduct, and that criminal prosecution has a "chilling effect" upon the bar. (See p. 1. Judge Greene adds that we contend the conviction violates "various statutory and constitutional provisions" but never recurs to those "various" provisions in his opinion.)

III.

Having thus impermissibly narrowed what we contend, Judge Greene unsatisfactorily answers even the contention as to contempt. He proceeds by saying that if conduct is punishable as a contempt, "it is difficult to perceive what basis there is for the contention that the disorderly conduct conviction would have a 'chilling effect'(p. 5 of original, p. 4 of copy), since the disorderly prosecution "does not extend by one iota the area of impermissible conduct" (p. 6 of original, p. 4 of our copy), i.e., conduct punishable as contemptuous. Indeed, we are taxed with deviation from the ACLU's Barnette position that the contempt power is more dangerous than criminal prosecution because limited by fewer procedural safeguards (pp. 6-8 of original, pp. 4-5 of our copy). This of course ignores the crucial point that there are political safeguards against contempt proceedings of which an attorney charged with disorderly conduct arising out of a congressional hearing is stripped, and that the "chilling" danger of penalty for bigorous advocacy is immeasurably increased when responsibility for prosecuting the lawyer is split between the subcommittee chairman (who merely considers the lawyer's conduct objectionable but not requiring action) and a court (which holds it criminal) and relies for its findings exclusively upon the testimony of police officers who attended the sessions. One need hardly dwell on this, for the aberration of logic involved appears on the face of Judge Greene's opinion.

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* The text of Sec. 22-3111 follows:

Disorderly conduct in public buildings or grounds--Injury to or destruction of United States property.

Any person guilty of disorderly and unlawful conduct in or about the public buildings and public grounds belonging to the United States within the District of Columbia, or who shall willfully injure the buildings or shrubs, or shall pull down, impair, or otherwise injure any fence, wall, or other inclosure, or shall injure any sink, culvert, pipe, hydrant, cistern, lamp, or bridge, or shall remove any stone, gravel, sand, or other property of the United States, or any other part of the public grounds or lots belonging to the United States in the District of Columbia, shall, upon conviction thereof, be fined not more than fifty dollars. (July 29, 1892, 27 Stat. 325, ch. 320, Sec. 15)

The whole system of contempt in respect to legislative bodies shows that any proceeding against an allegedly contumacious individual is intended to require initiation or determination by the entire legislative body. Where the Congress calls upon the judicial branch of the government to act, as, for example, under 2 U.S.C., Sec. 192, the proceeding is based not upon a request by an individual Congressman or even a committee, it requires a resolution of the House of Representatives forwarded to the executive branch of the government, calling upon it to initiate the prosecution. And plainly if the legislature invokes its own built-in contempt power, its exercise is based upon action by the entire body.

All of this is short-circuited by the neat device of a prosecution under disorderly conduct, with the charge being brought by a deputy marshal and tried by a judge, neither of whom has responsibility to the legislative body.

After dwelling atlength on the suggestion that Professor Kinoy is better off charged with disorderly conduct than with contempt, Judge Greene rightly shows at pp. 6 -7 (our copy) that a contempt conviction of Professor Kinoy would be so impracticable as to be wholly out of the question. Pages 6 - 7 refute pp. 3 - 5 more capably than we could do.

Judge Greene ignores an additional point. A judge or committee before whom an attorney appears knows whether the attorney's conduct passes bounds of reason in the sense of persisting after there is no real likelihood that the judge or chairman will change his mind. Another judge must speculate about this, as Judge Greene does in this case. Of course Judge Greene nowhere mentions that Chairman Pool had in this case asked for the return of Professor Kinoy and obviously did not have the slightest intention of invoking formal proceedings in this matter.

Although the Court does not state wherein Professor Kinoy's conduct violated the law, it does state why it thinks his conduct objectionable, and beyond the protection of the safeguarding principles we invoke (pp. 3-4 of original, pp.2-3 of our copy). This whole argument misses the mark, since it is obviously not open to a court to punish conduct under a criminal statute whose elements are not proved simply because the court regards the conduct as offensive. Mr. Justice Holmes made the point in McBoyle v. United States, 283 U.S. 25, 27 (1931), and we have heard no answer to it from Judge Greene, who seems to reason that because Professor Kinoy might be guilty of contempt if the Congress saw fit to invoke its available remedies (p. 3), and because punishment of some sort is needed to protect Congress from disruptive sessions (pp. 6-7 of copy), therefore Professor Kinoy is guilty of disorderly conduct under a statute whose elements are not discussed and in a case where Congress has not seen fit to invoke its remedies.

In our brief we pointed out that the ordinary criminal process was never used as a mechanism to control the conduct of a lawyer in the making of an argument. We pointed out that there apparently is no record of any prosectuion of this type and that the relegation of these matters to the contempt process was established as long ago as the days of Lord Mansfield.

Judge Greene's suggestion that this is all merely a matter of convenience or "relative simplicity" (fn 10) of course misses the entire point. Lord Mansfield referred to subjecting a lawyer to the ordinary process of criminal law in this context as subversive. Moreover, it is obvious that if "relative simplicity" is at issue, certainly the prosecution of contempt in the legislative area is much less simple than that of disorderly conduct. Judge Greene admits as much later on in his opinion (p. 6).

Lastly, neither of the two cases cited by Judge Greene in footnote 10 involves prosecution of a lawyer. So far as we know, it remains the fact that Professor Kinoy's prosecution is the first time that an attempt has been made to apply a disorderly conduct statute to a lawyer by reason of the level or tome of his voice in oral argument before a court of legislative tribunal.

## IV.

Judge Greene, in an effort to remove Professor Kinoy from the protections that he might assert in his role as a lawyer, appears to have inaccurately summarized the provisions of the Committee's rules, and has ignored the practice of the Committee.

A. Judge Greene says that the "committee's rules provide no role whatever for one who, as this defendant, represents someone other than a witness on the stand," hence that Professor Kinoy can claim no freedom from interference with his argument (p. 2). To the extent that this statement suggests that only a witness on the stand, while he is on the stand, is entitled to counsel, and that Professor Kinoy did not therefore achieve "the status of Counsel within the meaning of Rule VII" (ibid), the Court's footnote 5 does not support its text, and the text is unsupportable. Rule VII(A) provides that at every hearing "every witness shall be accorded the privilege of having counsel of his own choosing." There is no limitation here to a witness on the stand, and Professor Kinoy plainly acquired the "status of counsel within the meaning of Rule VII" by virtue of his representation of a subpoenaed witness at the hearing. The portion of Rule VII(B) quoted by the Court says only what counsel may not do while his client is on the stand; it expresses no purpose to deny the "status of counsel" within Rule VII (or, more pertinent, within Rule VIII) to a lawyer present to represent a subpoenaed witness while that witness is not on the stand.* In any event, Judge Greene ignores the fact clearly shown by

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* The text of Rules VII and VIII follows:

Rules of Procedure, Committee on Un-American Activities (Revised September 14, 1965, 89th Congress, 1st Session) U.S. House of Representatives, Washington, D.C.

VII - Advice of Counsel:

"A- At every hearing, public or executive, every witness shall be accorded the privilege of having counsel of his own choosing.

B- The participation of counsel during the course of any hearing and while the witness is testifying shall be limited to advising said witness as to his legal rights. Counsel shall not be permitted to engage in oral argument with the Committee, but shall confine his activity to the area of legal advice to his client."

[fn. continued next page]

the testimony and reflected in his opinion at p. 2 that, whatever the paper rules, this subcommittee had previously listened to counsel in Professor Kinoy's posture, to the extent of entertaining motions made by counsel and denying them on the merits. The significance of this fact appears in the following subparagraph.

B. Judge Greene next says that even if Porfessor Kinoy was "counsel," he was not permitted under Rule VII to present argument (p. 2). But Mr. Gutman and Mr. Kunstler testified without contradiction (and Judge Greene made no contrary factual finding), that counsel had been heard in argument previously, and Mr. Gutman related at least one instance when the argument caused the sub-committee to change a ruling. (It should be noted that the Committee Rules, in terms, also do not allow counsel to make any motions before a sub-committee, yet the Supreme Court held in Yellin that a sub-committee which entertained such a motion was required to act properly on it.) The sub-committee gave Professor Kinoy no warning that the rules of practice established de facto were suddenly to be changed. Under these circumstances, it would be exactly the "indefensible sort of entrapment" of which the Supreme Court spoke in Raley v. Ohio, 360 U.S. 423 (1959), and Cox v. Louisiana, 379 U.S. 559, 568-573 (1965), to hold that Professor Kinoy was "not entitled to present argument" (p. 2), in the sense that he could be criminally prosecuted for doing so. (Judge Greene conveniently ignores, as well, the clearly uncontroverted fact that Congressman Ashbrook continued to discourse with Professor Kinoy after the chair's ruling.) Third, says Judge Greene, it was obvious that argument would be unavailing, since the sub-committee had made up its mind. This again ignores Mr. Gutman's testimony and the common experience of lawyers and men that people do sometimes change their minds. No whistle was blown on Mr. Gutman and, again, blowing the whistle on Professor Kinoy was indefensible entrapment.

C. Finally, says Judge Greene, "legal argument must be kept within bounds; it may not be offensive; and it may not deteriorate into a persistent effort to drown out the voice of the presiding officer [or what seems to be such an attempt, when counsel speaks loudly in a large and concededly noisy chamber]." (p.3) But it is exactly this sort of imprecise restriction on counsel's conduct, backed by the threat of criminal penalties if counsel misjudges or if the marshal-witnesses later mis-estimate the decibles of sound involved, which we contend--and rightly, we submit--creates an unconstitutionally "chilling effect" on the conduct of attorneys.

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[continued from p. 11]

VIII - Conduct of Counsel:

"Counsel for a witness shall conduct himself in a professional, ethical, and proper manner. His failure to do so shall, upon a finding to that effect by a majority of the Committee or Sub-committee before which the witness is appearing, subject such counsel to disciplinary action which may include warning, censure, removal of counsel from the hearing room, or a recommendation of contempt proceedings.

In case of such removal of counsel, the witness shall have a reasonable time to obtain other counsel, said time to be determined by the Committee or Sub-committee. Should the witness deliberately or capriciously fail or refuse to obtain the services of other counsel within such reasonable time, the hearing shall continue and the testimony of such witness shall be heard without benefit of counsel."

## V.

Judge Greene completely ignores the consideration that, even if Professor Kinoy's conduct was improper and unprotected, Committee Rule VIII prescribes the procedure for dealing with such conduct, and the Rule was not complied with here because no "finding to that effect by a majority of the ... Subcommittee" was made. The Court cites in p. 3 n. 4 [in copy, p. 2] a passage in a previous district court decision, Miller, suggesting that a majority may act by tacit acquiescence in its chairman's rulings. But the Miller view to that effect was expressly overruled by Gojack v. United States, 384 U.S. 702 (1966). Under Yellin and Gojack, this violation of Rule VIII defeats the prosecution.

## VI.

There are two separate constitutional questions which Judge Greene has either ignored or misstated.

A. It is indisputable that Professor Kinoy's activities before HUAC were in the area of First Amendment protected activities and Sixth Amendment rights of counsel and advocacy. N.A.A.C.P. v. Button, supra; Holt v. Virginia, supra.

Aside from the question of constitutional infirmity by reason of vagueness discussed above, there is yet another constitutional issue, namely, the requirement of specific intent.

In cases where the Court has permitted any restriction in the area of the First Amendment, it has insisted at minimum upon a finding of specific intent to commit a substantive evil which was within the power of the sovereign to regulate (cf., Dennis v. United States, 341 U.S. 494 (1951); Yates v. United States, 354 U.S. 298 (1957). In the context of this case, the specific intent would be the intent to obstruct the proceedings.

At the oral argument made at the conclusion of the trial, Judge Greene expressly rejected the suggestion that he would have to find a specific intent to obstruct and in his opinion he does not even discuss the question.

The cases dealing with contempt make it clear that a court would insist upon a finding of a specific intent to obstruct. Having asserted that a prosecution for disorderly conduct is available to do the same job as contempt, and having erroneously claimed that this proceeding really goes no further than contempt, Judge Greene eliminates a requirement of specific intent (which would govern a contempt proceeding) even though the conduct is concededly in the area of First Amendment protected activity.

B. On the matter of separation of powers, Judge Greene firstly suggests that Professor Kinoy does not have standing and that indeed the issue of separation is one to be raised only by the legislative body rather than a defendant in a criminal prosecution. The suggestion that a citizen affected by a breach of the doctrine of separation of powers does not have standing to raise the issue is not supportable. It has never been doubted that the citizen has standing to raise the separation of powers issue when the legislature interferes with or purports to exercise judicial functions. Cf., Kilbourn v. Thompson, 103 U.S. 377 (1881). The two cases cited by Judge Greene in no way deal with separation of powers. Ponzi v. Fessenden, 258 U.S. 254 (1922), and Herbert v. Lee, 272 U.S. 312 (1926), deal with comity as between the Federal and State governments in the matter of criminal prosecutions.

Moreover, the suggestion that this prosecution is not a violation of separation of powers because it might be considered an aid to the legislature rather than interference with it, again is based upon Judge Greene's ignoring of the record. The Court studiously avoids mentioning that Congressman Pool asked that Professor Kinoy be returned; that the charge in this case was not made by or on behalf of the Committee; that not a single Congressman or representative of the Committee testified in support of the charge; and that in fact, as pointed out in our brief on the motion in arrest of judgment, the following day, seven lawyers refused to appear and the hearings before the Committee were in fact obstructed by the conduct of the U.S. marshals in respect to Professor Kinoy.

## CONCLUSION

To recapitulate, Judge Greene appears to be quite inaccurate in his statement of the facts and ignored the actual record before the Committee. He has not shown what law Professor Kinoy is claimed to have violated or how he can constitutionally be punished for his alleged acts under either the common law or the several statutes which are mentioned. He treats as a contempt an act which is not a contempt, and then treats a contempt as ao ipso disorderly conduct. He says Professor Kinoy is fortunate to be prosecuted for disorderly conduct because he would be worse off if punished for contempt. He inaccurately summarizes the provisions of the House Rules as to the role and status of the lawyer and ignores the significant constitutional questions which are at issue in this prosecution.

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156 FIFTH AVENUE / NEW YORK / NEW YORK 10010 / ORegon 5-5990

August 23, 1966

# MEMORANDUM

RE: Recent Hearings of the House Committee on Un-American Activities and Related Events

Because of the publicity and interest generated by the recent hearings of the House Committee on Un-American Activities and the role of the American Civil Liberties Union in those hearings, we have prepared the following memorandum detailing the relevant events, the latest legal challenge in the ACLU's long-standing fight against HUAC, and the issues at stake.

## 1. The Facts of the Case and the Position of the ACLU

On Monday, August 15, the American Civil Liberties Union and the New York Civil Liberties Union filed a complaint against the House Committee on Un-American Activities to test the constitutionality of its mandate to investigate "propaganda" activities. The Union moved for an order certifying that the constitutional issues raised in the pleadings required the convening of a statutory three-judge District Court (from which any appeal would go directly to the U. S. Supreme Court) and for a temporary restraining order prohibiting HUAC from proceeding with its hearings scheduled for the next morning. Judge Corcoran, of the federal District Court in Washington, D. C., granted both motions. The next day the three-judge court dissolved the temporary restraining order on the grounds that our showing of "irreparable injury" had been inadequate, but retained jurisdiction over the constitutional issue raised by ACLU. A hearing on this issue was scheduled for 2:30 on Wednesday.

On Wednesday morning the Government filed a motion to dismiss the complaint which is still pending. At the same time the three-judge court on its own motion postponed the Wednesday afternoon hearing until further order and requested both parties to file memoranda of law on August 22 as to whether the three-judge court should dissolve itself and remand the case to the original single-judge court. The August 22 deadline was later extended to August 26.

Upon the dissolution of the temporary restraining order the House Committee commenced its hearings. The opening witness was Phillip Luce, a friendly witness to the Committee, who had been a past member of the Progressive Labor Movement. During the course of the testimony several persons in the audience interrupted the hearings to shout their disapproval. These persons were physically removed by marshalls and charged with disorderly conduct while others were similarly arrested and charged on mistakes as to identity for applauding at the wrong time (persons applauding statements by the chairman or by friendly witnesses were not arrested) or for other improper reasons.

During the balance of the afternoon, witnesses not represented by ACLU were called to testify. They answered some questions concerning their political beliefs, but refused to answer others concerning naming names, financial matters and some organizational activities.

On Wednesday, during the morning session of the HUAC hearings, Arthur Kinoy, ACLU Cooperating Attorney, member of the Supreme Court Bar, Professor of Constitutional Law at Rutgers University, and one of the victorious attorneys in

*Dombrowski v. Pfister* [380 US 479 (1965)], was engaged in colloquy with a member of the Committee. The colloquy concerned Kinoy's objections on behalf of his client, Walter Teague, regarding the testimony being given by a Government informant concerning Teague. When Chairman Pool over-ruled Kinoy's objection, Kinoy insisted on his right to make the record show the nature of his objections, inasmuch as his client was being implicated by a witness without the benefit of cross-examination. At this point Pool interrupted and ordered him to sit down; and as Kinoy then sought to make the record show that he had not been permitted to state fully the reasons for his objections, marshalls grabbed him, the chairman ordered him removed, and the marshalls roughly dragged him from the hearing room. Kinoy was arrested and taken to the station house and booked with "disorderly conduct," mugged and fingerprinted. Not knowing of the arrest the Chairman subsequently ordered his return. Meanwhile, each of the counsel made a separate statement to the Committee concerning the treatment received by Kinoy and requested an adjournment on the grounds that any chance they had to represent their clients adequately had been destroyed. The request was denied and all counsel left the hearing room. Thereafter two of the clients also left the hearing room after making statements that they would not remain if they did not have counsel of their own choice, while others offered to testify without counsel only under protest and their subpoenas were continued to November 15.

Contrary to the impression that may have been created by press accounts, photographs and even television broadcasts, the arrest of Arthur Kinoy grew out of his advocacy of procedures for which ACLU has consistently battled. He was protesting that the ACLU client was being maligned and that any testimony concerning him should be given in executive session. This is substantiated by the copy of the transcript of the hearings at this point/ and the account in *The New Republic* of August 27 (see Appendix A), which show that Kinoy was attempting to secure the most elemental due process for ACLU's client. His conduct was, as a New York Congressman stated to Jack Pemberton, nothing more than the normal colloquy expected in a House hearing. Jack Pemberton was quoted in the New York Times of August 18 as saying "that in all my years as an attorney I have never experienced the shock I did this morning" at the forcible removal of Mr. Kinoy. (Needless to say, the ACLU did not support the intemperate behavior exhibited by some of the spectators, though the National Capital Area CLU is representing those believed by it to have been wrongfully arrested.)

Although the rules of HUAC do not provide for it, the ACLU feels that

> Counsel for witnesses should have the right to make and to explain briefly non-repetitious objections to the relevancy or propriety of committee questions or to other committee procedures which violate his client's rights. Counsel should also be permitted to subject his client to reasonably direct examination in order to explain or justify answers given to the committee.
>
> Before airing defamatory, prejudicial, or adverse information, a committee should screen such material in executive session to determine whether or not it is reliable. The individual whom the information tends to prejudice should be properly notified and given an opportunity to appear before the committee in executive session with other witnesses if he so requests, or with other evidence rebutting the information. The same requirement of fair notice pertaining to witnesses at public hearings should apply here, and should include a ban on disclosure of the names of witnesses in advance of their appearance. There should be an absolute prohibition on the publication of information discussed at the session, prior to a determination of whether to hold a public session at which the defamatory information will be presented....
>
> If adverse testimony is given in public session after the committee has determined in executive session that it is appropriate to the investigation, any person about whom such testimony is offered should be afforded an opportunity to:
>
> a. testify or offer sworn statements in his behalf;
> b. subject the witness offering prejudicial testimony to cross-examination;
> c. obtain the assistance of the investigation committee in compelling the attendance of witnesses and the production of documents reasonably necessary to rebut the charges against him.
>
> Though cross-examination has not generally been recognized as a right or even a privilege by congressional investigating committees, it is absolutely necessary to prevent or expose unfounded charges which may ruin an individual's reputation forever. The little time consumed by cross-examination is a fair price to pay for the assurance that such injustice will be avoided. (Board minutes, 8-9-65 and 9-13-65; ACLU Statement on Fair Procedure for Legislative Investigations, 9-23-65.)

Arthur Kinoy was tried that afternoon and Friday morning on the charge of disorderly conduct and was found guilty by the judge who fined him $50. The conviction will be appealed.

[The point hardly need be made that in its representation of clients subpoenaed to appear before HUAC, the ACLU, as in every such case, disassociates itself from the political or other views of its clients and concerns itself only with the constitutional and civil liberties issues involved.]

## 2. ACLU's Legal Challenge of HUAC

The basic theory of the complaint filed by the ACLU on August 15 is that the mandate of the House Un=American Activities Committee (which is incorporated into a Federal statute) is unconstitutional on its face. We allege that the mandate which authorizes the Committee to investigate un-American "propaganda" activities sets forth a charter authorizing investigations into the areas protected by the First Amendment, namely freedom of speech, belief and association. The question of the mandate was before the court in Barenblatt v. United States [360 US 109 (1959)] and was upheld by a 5 to 4 vote. It has also been raised subsequently in Wilkinson v. United States [365 US 399 (1961)] and Braden v. United States [365 US 431 (1961)].

Just this last term, the Supreme Court, in granting certiorari in the ACLU directly supported Gojack case [369 US 749 (1962)], granted the petition on, among other grounds, the question of the constitutionality of the Committee's mandate. Although the reversal of the conviction in Gojack on other than constitutional grounds was ordered, we have argued in this suit that the Supreme Court has in effect ruled that the issue of the Committee's mandate presents a substantial Federal and Constitutional question.

Our attempt to secure a court order enjoining the hearings rests on the premise, first, that because of its mandate anything the Committee does is constitutionally impermissible; and second, that the practices of the Committee have damaged irreparably the lives of those who have been subpoenaed to appear before it because of exposure without the protection of due process.

Moreover, it is ACLU policy that

> A witness who believes that a committee has asked him a question which he has a legal right not to answer should be allowed to make an immediate application to a federal court, which will then decide whether the question is a proper one or whether the witness is constitutionally privileged not to answer it. (Board minutes, 9-13-65)

There is a great deal of talk by the Committee of its consideration of the "Pool" Bill which would make it a crime punishable by a $20,000 fine and/or twenty years imprisonment to give aid to "any hostile power, or agency or national thereof, or to any organization, group, or person acting in hostile opposition to the Armed Forces of the United States." Rather than engage in a discussion concerning the merits of the Pool Bill and its grave constitutional defects, the ACLU has taken the position that since the mandate is unconstitutional every action of the Committee is tainted by that unconstitutionality, including the nominal subject matter of these hearings, the Pool Bill.

3. The Question of the Separation of Powers

When the ACLU complaint was filed on August 15, there were angry cries from Congressmen and others that the principle of the separation of powers was being abridged. THe ACLU takes the position that (1) HUAC's mandate is unconstitutional. (2) The suit seeks to establish the unconstitutionality of that mandate. (3) The court is an appropriate forum for the declaration of that unconstitutionality, especially in light of the Supreme Court's grant of certiorari in Gojack.

The power of any of the three branches of government is not absolute, for the principle of "checks and balances" is also in operation. Ever since 1803, when Chief Justice John Marshall, speaking for the Supreme Court in Marbury v. Madison, first declared an act of Congress unconstitutional, the authority of the courts to act as a check on the legislative branch has been generally recognized. Although a Congressional legislative hearing is not the same as an Act of Congress, the ACLU feels that a judicial remedy is appropriate whenever an individual's civil liberties are jeopardized or abridged in the course of a legislative hearing where the traditional procedural protections of due process are not available to him. The recent Supreme Court decisions commanding reapportionment of the state legislatures on the basis of one man, one vote makes clear that the doctrine of separation of powers is no bar to the assertion of individual rights.

Moreover, it has been suggested that Congress itself, in allowing HUAC free reign is overstepping the principle of the separation of powers, for any hearing conducted by HUAC invariably takes on the aspects of a judicial proceeding, but lacks the guarantees of due process to the witnesses provided by a proper court.

## 4. Additional Information

An important source of information dealing with HUAC is the pamphlet, "The Case Against the House Un-American Activities Committee" published by the ACLU. Copies may be ordered from this office for $.35 each.

The New York Times of August 22, 1966 printed an editorial on both the nature of the HUAC and the ACLU's attempt to secure judicial relief. A copy is attached as appendix B for your information.

Mr. Nittle. Now, in the course of your attendance, did you come in contact with a person named Walter Dorwin Teague III?

Mr. McCombs. Yes, sir, I believe I did.

Mr. Kinoy. I object, Mr. Chairman. As one of the attorneys for Walter Teague, who is present in the hearing room, I object to any testimony about him in open session. I also object if I am not given the American right to cross-examine this witness in reference to any statement about Mr. Teague, and I ask for a ruling on both of my requests.

Mr. Pool. I believe you made the same objection yesterday; is that correct?

Mr. Kinoy. I made the same objection with reference to Mr. Kreb yesterday and Stanley Nadel.

Mr. Ashbrook. Mr. Chairman, I move that the objection be overruled.

Mr. Kunstler. My name is William M. Kunstler

Mr. Kinoy. Mr. Chairman, I would like to be heard on that motion, and I also am an attorney for Mr. Teague. Do I understand that it is the ruling of this committee that the fundamental right of cross-examination is not to be afforded to witnesses who are called before this committee when the committee is attempting to defame?

Mr. Pool. You are arguing the question.

Mr. Kinoy. Of course lawyers always argue questions, Mr. Chairman.

Mr. Ashbrook. You didn't argue the question; you made a misinterpretation of fact when you said we are endeavoring to defame something.

He is totally out of order, Mr. Chairman. Such is not the case.

Mr. Kinoy. Mr. Chairman, that question will be settled in Federal Court whether you are attempting to defame witnesses.

Mr. Ashbrook. You made it as a statement of fact, and as a lawyer you know you are absolutely wrong. You are out of place.

Mr. Pool. The objection is overruled.

Mr. Kinoy. May the record show we take a strenuous objection to your ruling.

Mr. Pool. Now sit down. Go over there and sit down. You have made your objection. You are not going to disrupt this hearing any further.

Mr. Kunstler. Mr. Chairman, you don't have to deal discourteously to an attorney in front of you. That is wholly un-American.

Mr. Pool. I will deal any way I want under the rules in this hearing. I have just told him to be quiet and I ask you to sit down now.

Mr. Kinoy. Mr. Chairman, let the record show -- don't touch a lawyer. Mr. Chairman --

Mr. Pool. Remove the lawyer.

Mr. Kinoy. Mr. Chairman, I will not be taken from this courtroom. I am an attorney-at-law and I have the right to be heard.

Excerpt from The New Republic, August 27, 1966, "T. R. B. from Washington":

"We sat about 15 feet from where lawyer Arthur Kinoy was making a point of order for one of the subpoenaed witnesses. On the raised dais above him sat Chairman Pool, like a frog on a lily pad. Mr. Kinoy is a respectable attorney, member of the bar of the US Supreme Court and professor of law at Rutgers. He is a counsel for that subversive organization, the American Civil Liberties Union. He was making a persistent point for his client, but in a quiet voice. Suddenly, in front of us all Pool lost control. He seemed to swell. At the top of his voice he bellowed, "Now sit down!" He gave a tremendous whack with his gavel.

"Without any chance to sit, let alone turn, little Kinoy was instantly pinioned by three big plainclothesmen, his wrists twisted, an arm choked about his throat, and he was dragged out. Seven other defendants' lawyers looked aghast and learned incredulously that their eminent colleague had been taken off to jail. Pool, looking a little scared, calmed down a bit. We felt a bit frightened, too. We had never seen a client's lawyer taken off to jail before."

# APPENDIX B

THE NEW YORK TIMES, MONDAY, AUGUST 22, 1966.

## The Incurable Committees . . .

It is a measure of how low the House Un-American Activities Committee has sunk in public esteem that Senator Everett Dirksen has joined those who condemn its unseemly spectacles and its legislative futility.

Senator Mike Mansfield, the majority leader, has agreed with Mr. Dirksen that the House committee's disorderly hearings last week did nothing for the good reputation of Congress. They also doubt the Senate would pass the bill which provided the legislative pretext for those hearings, presuming the House has the bad judgment to approve it.

Since members of the Senate rarely comment in this sharply critical vein about the work of "the other body"—as the House is termed in parliamentary discourse—they clearly recognize that the public is weary of the Un-American Activities Committee's antics. The Senators might well have extended their criticisms to include the Senate's own Internal Security Subcommittee which, though quiescent of late, is equally useless and has in the past conducted some unseemly hearings of its own.

The bill sponsored by Representative Joe R. Pool, Texas Democrat, who presided over last week's hearings, epitomizes what is wrong with the committee itself. Insofar as the bill to halt aid to the Vietcong deals with actions, its legal purposes have already been achieved by the Export Control Act, the Trading With The Enemy Act, and various statutes on treason and sabotage. Insofar as the bill deals with speech, it transgresses the First Amendment and is an unconstitutional invasion of the rights of citizens to express their ideas, regardless of what those ideas may be.

The House committee and the Senate subcommittee suffer from the incurable defect that in striking at what is "un-American" or harmful to "internal security," they strike at freedom itself. Since their hearings are superfluous in controlling overt illegal acts, they usually are devoted to attacking unpopular opinions and marginal political groups. Many of these very small organizations, like those which participated in last week's hearings, would never be heard of if the committees did not give them free publicity.

Any duly constituted committee of the Congress is entitled to respect. If a witness's rights are violated, there are remedies in the courts. But, as a practical matter, Congress cannot hope to command respect for a committee if that committee has a defective mandate and engages in political scrimmaging with witnesses who hope to profit by turbulence and publicity. Congress can cure this condition only by radical surgery that will get rid of these two committees.

## . . . and Judicial Pillory

Congressional annoyance at Federal Judge Howard Corcoran's short-lived attempt to enjoin hearings of the House Committee on Un-American Activities was predictable and even understandable. What is less defensible is the hysterical tone a number of Representatives have been taking over the incident.

The irate Congressmen seem oblivious to the fact that a serious constitutional issue is involved here, one that cannot be settled by abusing the court. That issue is whether or not the procedures of the Un-American Activities Committee are constitutional to begin with, whether or not in the light of its record injunctive relief is necessary to protect citizens from probable injury. All that Judge Corcoran tried to do was to postpone the committee's tempestuous hearings until that issue could be properly presented to the court.

To argue that his action breached the principle of the separation of powers is to contend that each of the three branches of Government is sovereign, its powers in no way subject to checks and balances imposed by the other two. Obviously that is not the case. Congress has the power to check the courts by fixing their jurisdictions, by financing their operations, by passing on the appointment of the judges and, of course, by changing the very laws which they interpret. In turn the courts may—indeed must—pass on the constitutionality of Congressional actions.

As we have previously made clear, we are glad Judge Corcoran's order was overruled by a special appeals court. But for Congressmen to behave as if the judge had committed lèse-majesté is to assume a pose of absolutism which does them no credit. Representative Claude Pepper did well to remind his colleagues of what another judge, Lord Coke, said to the King who wanted to sit on his court: "The King, too, is under the law."

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# REMARKS OF PROFESSOR ARTHUR KINOY BEFORE SENTENCING

(Stenographic transcript Friday, August 19, 1966)

MR. KINOY: Your Honor, needless to say, I am very disturbed and concerned about what has transpired today. I am not so concerned or disturbed, your Honor, for myself. I intend to continue to the very best of my ability to pursue a vigorous defense of the constitutional liberties of American citizens in what, I believe, to be the highest and finest traditions of the American Bar. I am deeply concerned and upset at the impact of what I consider to be one of the most extraordinary rulings in the history of our American law upon the rest of the American Bar.

I am concerned at the chilling and freezing effect, to use the words of Mr. Justice Brennan in the Dombrowski opinion last year, upon other attorneys who are called upon to represent clients before the House Committee on Un-American Activities and the courts of the land where the charges against the client are charges involving such inflammatory and public explosive questions as the exercise of opinions and beliefs contrary to the opinions of a given segment of society at the moment.

What I am concerned about is: if an American lawyer in arguing a point before an American court must say to himself: "Now, my voice is getting a little louder; the criminal sanction of the law is going to cut me off" -- or the lawyer who sits at a table and says to himself: "I want to preserve a record for my client, but I better be careful; I know what happened to Professor Kinoy. He wanted to preserve a record in a very difficult tribunal" -- I suggest your Honor observe the functioning of that tribunal some day -- and that lawyer sitting here will say to himself: "If I press this objection, I stand the risk of a criminal sanction."

The danger of what has occurred here today is not to me. The danger is to the American Bar.

I have been led to believe -- and it's the foundation stone upon which I build my life -- that a free and independent American Bar is the finest and ultimate guarantee and protection that the people of this country will have the opportunity to exercise the fundamental rights which they possess under the Constitution, and the degree to which the fear of criminal sanctions for practicing law is imposed, to that degree American lawyers, lawyers sitting here --

THE COURT: Mr. Kinoy.

MR. KINOY: Yes, your Honor.

THE COURT: You are addressing the Court for the purpose of discussing the question of sentence --

MR. KINOY: Yes, I am, your Honor.

THE COURT: -- to be imposed. You are not arguing now.

MR. KINOY: I think your Honor will accept the fact that this is the most extraordinary position for a lawyer and a professor of law to be in, and I think I am entitled to a few moments of the Court's time.

1-2

Yes, I am addressing myself to sentence, your Honor.

I trust your Honor, in imposing sentence, will consider whatever is required for guaranteeing that in the speediest possible way this case goes to the high courts, and I am not concerned about myself.

Your Honor may impose whatever your Honor thinks is proper. I make no plea for mercy. I have no regrets or remorse for what I have done. I will do it again and again and again and again and again and again.

I ask your Honor, as a fellow member of the Bar, that whatever the procedural situations are, that this case shall go to the Court of Appeals of the United States and, if need be, to the United States Supreme Court. Let's take it there and let's take it fast, because I am deeply confident that when this case reaches the higher courts of this land, this decision today will be reversed.

Thank you, your Honor.

* * * * * * * * * * *

FOR RELEASE: August 18, 1966

We, the undersigned, colleagues of Professor Arthur Kinoy on the faculty of the Rutgers Law School wish, as lawyers and as professors of law, to express our outrage at the manner in which Professor Kinoy was yesterday physically brutalized while arguing legal points before the Committee on Un-American Activities of the United States House of Representatives.

Professor Kinoy was objecting to the taking in public session of testimony on the ground that it tended to defame, degrade or incriminate his client, asking the Committee to go into executive session, asking for a transcript and reserving the right to cross-examine. These requests may well have been properly raised by Professor Kinoy under Rule XI (26) of the House of Representatives. This area of the law is not clearly defined. Similar requests had repeatedly been heard by this Committee during the hearings without yesterday's extreme reaction on the part of the Committee. Even if the points he raised were not correct, however, and even if he was technically out of order in raising them, Professor Kinoy was still properly acting as a member of the Bar, conscientiously discharging his duty to his client. Vigorous advocacy before legislative hearings, as well as before courts, is a central and vital part of the American legal tradition.

From time to time a dedicated lawyer runs the risk of transgressing the technical rules of judicial or legislative decorum in defending his client's interests. Indeed, to refrain from taking an action when it is not clear, whether or not that action will be a breach of decorum would be to compromise the lawyer's primary duty to his client.

When a lawyer thus transgresses the rules of decorum, it is clearly proper for a court or legislative Committee to admonish or otherwise discipline him. Such action is necessary to the maintenance of orderly proceedings. However, the action of the Committee in ordering a number of guards to physically seize and eject an attorney arguing his client's cause, goes far beyond what is necessary to preserve order.

The rules of the Committee specifically provide that witnesses before it are entitled to counsel. That right is not abrogated by the unpopularity or the extremity or the content of the witness' political views. In terrorizing and intimidating a lawyer, the Committee created such a hostile atmosphere as to make a mockery of the right to counsel. This position was taken by other lawyers present, representing persons subpoenaed by the Committee and prompted their withdrawal from the Committee room. Those who attack a client by attacking his lawyer strike at the very roots of due process and fundamental fairness.

We do not express a view on the question of the war in Viet Nam or on the question of the propriety of the existence of the House Committee or on the question of the propriety of this particular inquiry of the House Committee or on the litigation in which that Committee is now involved. We do not all agree on all of these subjects. We do, however, agree that the Committee's action in causing Professor Kinoy to be brutally seized and ejected is a shocking abuse of its power, an affront to all members of the Bar and a threat to the legal rights of all citizens.

g-2

Frank Askin

David Bazelon

Alexander Brooks

Robert A. Carter

Charles Cottingham

Vincent E. Fiordalisi

Ruth B. Ginsburg

John G. Graham

David Haber

Willard Heckel, Dean

Eli Jarmel

John Lowenthal

Gerald R. Moran

Eva H. Morreale

J. Allen Smith

STENOGRAPHIC TRANSCRIPT - HEARINGS BEFORE
HOUSE COMMITTEE ON UN-AMERICAN ACTIVITIES
Wednesday, August 17, 1966

(just prior to Professor Kinoy's removal
from hearing room)

Mr. Nittle: Now in the course of your attendance, did you come in contact with a person named Walter Dorwin Teague III?

Mr. McCombs: Yes, sir, I believe I did.

Mr. Kinoy: I object, Mr. Chairman. As one of the attorneys for Walter Teague, who is present in the hearing room, I object to any testimony about him in open session. I also object if I am not given the American right to cross-examine this witness in reference to any statement about Mr. Teague, and I ask for a ruling on both of my requests.

Mr. Pool: I believe you made the same objection yesterday; is that correct?

Mr. Kinoy: I made the same objection with reference to Mr. Krebs yesterday and Stanley Nadel.

Mr. Ashbrook: Mr. Chairman, I move that the objection be overruled.

Mr. Kunstler: My name is William M. Kunstler.

Mr. Kinoy: Mr. Chairman, I would like to be heard on that motion, and I also am an attorney for Mr. Teague. Do I understand that it is the ruling of this committee that the fundamental right of cross-examination is not to be afforded to witnesses who are called before this committee when the committee is attempting to defame?

Mr. Pool: You are arguing the question.

Mr. Kinoy: Of course lawyers always argue questions, Mr.

Chairman.

Mr. Ashbrook: You didn't argue the question; you made a misinterpretation of fact when you said we are endeavoring to defame something.

He is totally out of order, Mr. Chairman. Such is not the case.

Mr. Kinoy: Mr. Chairman, that question will be settled in Federal Court whether you are attempting to defame witnesses.

Mr. Ashbrook: You made it as a statement of fact, and as a lawyer you know you are absolutely wrong. You are out of place.

Mr. Pool: The objection is overruled.

Mr. Kinoy: May the record show we take a strenuous objection to your ruling.

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Mr. Kunstler: Mr. Chairman, you don't have to deal discourteously to an attorney in front of you. That is wholly un-American.

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Mr. Kinoy: Mr. Chairman, let the record show -- don't touch a lawyer. Mr. Chairman --

Mr. Pool: Remove the lawyer.

Mr. Kinoy: Mr. Chairman, I will not be taken from this courtroom. I am an attorney-at-law and I have the right to be heard.

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SEDFRE

KIRKLAND, W.L. et.al. VS KING, MARTIN LUTHER HINDS, MISSISSIPPI 1966

Box 38
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State Historical Society Of Wisconsin

Please Retain Original Order

[Enclosed, Bronstein to Rachlin, 1966, March 18]

MAR 10 1966

IN THE COUNTY COURT OF THE FIRST JUDICIAL DISTRICT

OF HINDS COUNTY, MISSISSIPPI

W. L. KIRKLAND, for the
Sunflower County Colored Baptist
Association
PLAINTIFF

vs.
No. ______

MARTIN LUTHER KING, JAMES FOREMAN,
EDWARD KING, STUDENT NONVIOLENT CO-ORDINATING
COMMITTEE (SNCC), NATIONAL ASSOCIATION FOR THE ADVANCEMENT
ADVANCEMENT OF COLORED PEOPLE (NAACP),
CONGRESS OF RACIAL EQUALITY, (CORE), and
SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE (SCLC)
DEFENDANTS

## DECLARATION

Now comes the plaintiff and files this his decelaration for damages against the defendants, and in support of his declaration would show unto the court the following facts; to-wit:

1A.

That the plaintiff, W. L. Kirkland, is a member of the Board of Trustees of the Sunflower County Colored Baptist Association, an unincorporated association, and he brings this suit on behalf of the association and the officers and members of the said association.

1B.

That Martin Luther King is a resident citizen of the State of Georgia where his mailing address is 334 Auburn Avenue, N.E., Atlanta, Georgia, and process may be had upon him by service upon the Honorable Hebert Ladner, Secretary of State of Mississippi, as made and provided by Section 1437 of the Mississippi Code of 1942 annotated, by virture of his having done business at the time complained of, and his now doing business, in the State of Mississippi, in particular in Sunflower County, Mississippi, both individually and through the unincorporated association Council of Federated Organizations.

1C.

That James Foreman is a resident citizen of the State of Georgia where his mailing address is 360 Nelson Street, S.W., Atlanta, Georgia, and process may be had upon him by service upon the Honorable Hebert [illegible] Ladner, Secretary of State of Mississippi, as made and provided by Section 1437 of the Mississippi Code of 1942 annotated, by virture of his having done business at the time complained of, and his now doing business, in the State of Mississippi, in particular in Sunflower County, Mississippi, both individually and through the unincorporated association Council of Federated Organizations.

1D.

That Edward King is a resident citizen of the State of Mississippi residing therein in Hinds County, Mississippi where he may be served with the process of this court at Tougaloo College, Tougaloo, Mississippi.

1E.

That Student Nonviolent Co-ordinating Committee (SNCC) is a corporation organized and existing under the laws of a state unknown to the plaintiff but may be served with the process of this court by service being made upon Edward King, an officer and/or agent of the corporation.

1F.

That National Association for the Advancement of Colored People (NAACP) is a corporation organized and existing under the laws of the State of New York and may be served with the process of this court by service being made upon Charles Evers, an officer and/or agent of the corporation.

1G.

That Southern Christian Leadership Conference (SCLC) is a corporation organized and existing under the laws of the State of Georgia and may be served with the process of this court by service being made upon Allen L. Jackson, 1057 West Pascagoula Street, Jackson, Mississippi, an officer and/or agent of the corporation.

1H.

That Congress of Racial Equality (CORE) is a corporation organized and existing under the laws of the State of New York, and may be served with the process of this court by service being made upon Annie Devine 832 Lutz Street, Canton, Mississippi, an officer and/or agent of the corporation.

2A.

That at all times complained of each of the defendants was a member of the unincorporated association Council of Federated Organizations (also known as COFO and hereinafter refered to as such), with numerous other persons and organizations, each being an officer and/or exercising themselves or through officers, agents, servants, employees, and/or members a degree of leadership in the said association.

2B.

That at all times complained of each of the defendants was, each with the other, and with numerous other persons and organizations, engaged in a joint venture covering the entire State of Mississippi, and in particular Sunflower County, Mississippi, which purpose was as stated by the defendants "to achieve full and complete integration of Negro citizens into the political and economic life of the State of Mississippi". That the wrongs complained of herein were caused by and as a result of this joint venture.

3.

That the Sunflower County Colored Baptist Association was organized more than 90 years ago as an unincorporated ecclesiastic association, being non profit for religious and educational purposes. In furtherance of this purpose in or about 1912 the association obtained the following described property located in Sunflower County, Mississippi; to-wit:

STATE OF MISSISSIPPI

COUNTY OF HINDS

> Beginning at the common corner of lots 2,3,6 and 7, being the Southwest corner of lot 2 of Section 6, of Township 18 North, of Range 4 West in said County and State, run thence East on the line dividing lots 2 and 7 of said Section 6, seventeen and twenty-seven hundredths (17.27) chains to the point of beginning and the Northwest corner of the lot here described; run thence east on the line line dividing lots 2 and 7 and lots 1 and 8 of said Section 6 7.07 chains to the Northeast corner of the lot here described; run thence South at right angles with the above described line 7.07 chains to the Southeast corner of the Southeast corner of the lot here described; run thence West parallel with the first line above described 7.07 chains to the Southwest corner of the lot described here; run thence North to the beginning point which is the Northwest corner of the lot here described run thence in an Easterly direction along the Southern boundary line of said lot a distance of 60 f feet; then in a Northerly direction parallel with the Western boundary line of said line to the point on the Northern boundary line of said lot, run thence in a Westerly direction along the Northern boundary line of said lot, a distance of 25 feet to the Northwest corner of said lot; run thence in a Southerly direction along Western boundary line of said lot to the point of beginning.

Baptist Association then went to John Harris, then and there being the Project Director of the COFO office of Sunflower County, Mississippi and informed him that COFO would have to vacate due to the fact that the Sunflower County Colored Baptist Association could not obtain fire insurance on the property.

5C.

That John Harris expressed a great desire to remain as tennants on the property and entered into the following oral agreement with the Sunflower County Colored Baptist Association; to-wit:

That as a further condition of the month to month tennancy he agreed for and on behalf of COFO and the corporations and persons being members thereof that should the property be damaged or destroyed by fire or other hazzards which had been covered by the policy of insurance just canceled COFO and the other organizations which he represented would restore the property to the condition which it was in at the time the tennancy began.

That with this further condition of the tennancy the tennants were allowed to continue to occupy the same.

6.

That on March 5, 1965 while COFO was occuping the premises, the building on the above described property was totally destroyed by fire.

7A.

That the said building which was destroyed by fire was a 200 feet by 100 feet brick building whose internal structure was of hardwood, and having a tile roof. The building was divided unto three rooms of equal size by folding doors which would fold back to enable the building to be used as an auditorium.

The building was fully wired for electricity having the required number of electrical fixtures and outlets; the building contained two seprate toilet facilities complete with water and sewage disposal; the building was equiped with gas heating complete with fixtures.

7B.

That the value of the building and the cost to replace the building was and is Nine Thousand-Nine Hundred Dollars ($9,900.00).

8A.

That after March 5, 1965 R. L. Kirkland inquired of the officers of COFO what they intended to do in regards to replacing the building which was destroyed and for which they were responsible for replacing. They at this time publicly acknowledged the obligation to rebuild the structure but stated that it would be necessary to raise funds first.

8B.

That a national appeal was made to raise funds for the purpose of rebuilding the building which had been destroyed. That as a result of the national fund raising drive many thousands of dollars were raised far in excess of the actual cost to rebuild the structure.

9.

That the Sunflower County Colored Baptist Association has made numerous appeals to the defendants for them to begin to rebuild the building, but all appeals have been in vain. The defendants has now stated that they have no intentions of respecting their earlier contract.

10.

Plaintiff respectifully requests a trial by jury.

11.

Wherefore, premises considered, plaintiffs demands judgment against the defendants jointly and severally in the amount of Nine Thousand-Nine Hundred Dollars together with all cost of this action.

Respectfully submitted,

L. H. Rosenthal
L. H. Rosenthal, Attorney for
R. L. Kirkland, who sues for and
and behalf of the officers and
members of Sunflower County
Colored Baptist Association

L. H. Rosenthal
406 West Capitol St.
Jackson, Mississippi

IN THE COUNTY COURT
OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI

W. L. KIRKLAND, for the
Sunflower County Colored
Baptist Association,

PLAINTIFF

V. No. 44,902

MARTIN LUTHER KING, JAMES
FOREMAN, EDWARD KING, STUDENT
NONVIOLENT CO-ORDINATING
COMMITTEE (SNCC), NATIONAL
ASSOCIATION FOR THE ADVANCEMENT
OF COLORED PEOPLE (NAACP),
CONGRESS OF RACIAL EQUALITY,
(CORE), AND SOUTHERN CHRISTIAN
LEADERSHIP CONFERENCE (SCLC),

DEFENDANTS.

# ANSWER

Comes now the defendant, Congress of Racial Equality (CORE) and answers plaintiffs Declaration as follows:

1A.

Defendant lacks sufficient information concerning the truth or falsity of the allegations in paragraph 1A. and therefore denies same.

1B.

Defendant lacks sufficient information concerning the truth or falsity of the allegations in paragraph 1B. and therefore denies same.

1C.

Defendant lacks sufficient information concerning the truth or falsity of the allegations in paragraph 1C. and therefore denies same.

1D.

Defendant lacks sufficient information concerning the truth or falsity of the allegations in paragraph 1D. and therefore denies same.

1E.

Defendant lacks sufficient information concerning the truth or falsity of the allegations in paragraph 1E. and therefore denies same.

1F.

Defendant lacks sufficient information concerning the truth or falsity of the allegations in paragraph 1F. and therefore denies same.

1G.

Defendant lacks sufficient information concerning the truth or falsity of the allegations in paragraph 1G. and therefore denies same.

1H.

Defendant admits that it is a corporation organized and existing under the laws of the State of New York, but denies that it may be served with the process of this court by service made upon Annie Devine, 832 Lutz Street, Canton, Mississippi and denies that she is an officer or agent of the corporation.

2A.

Defendant denies the allegations of paragraph 2A.

2B.

Defendant denies the allegations of paragraph 2B.

3.

Defendant lacks sufficient information concerning the truth or falsity of the allegations in paragraph 3 and therefore denies the same.

4A.

Defendant denies the allegations of paragraph 4A as to this defendant.

4B.

Defendant denies the allegations of paragraph 4B as to this defendant.

5A.

Defendant lacks sufficient information concerning the truth or falsity of the allegations in paragraph 5A and therefore denies the same.

5B.

Defendant lacks sufficient information concerning the truth or falsity of the allegations in paragraph 5B and therefore denies the same.

5C.

Defendant lacks sufficient information concerning the truth or falsity of the allegations in paragraph 5C and therefore denies the same.

6.

Defendant lacks sufficient information concerning the truth or falsity of the allegations in paragraph 6 and therefore denies the same.

7A.

Defendant lacks sufficient information concerning the truth or falsity of the allegations in paragraph 7A and therefore denies the same.

7B.

Defendant lacks sufficient information concerning the truth or falsity of the allegations in paragraph 7B and therefore denies the same.

8A.

Defendant lacks sufficient information concerning the truth or falsity of the allegations in paragraph 8A and therefore denies the same.

8B.

Defendant lacks sufficient information concerning the truth or falsity of the allegations in paragraph 8B and therefore denies the same.

9.

This defendant denies that any appeal was made to it by the plaintiff and since this defendant has no knowledge with respect to the other defendants, this defendant denies the other allegations of paragraph 9.

## AS AN AFFIRMATIVE DEFENSE

10.

This defendant does not have and did not have at the time of the wrongs complained of, or of the service of process herein, any agents or employees residing in or present in Hinds County, Mississippi, and therefore this court has no territorial jurisdiction over this defendant.

11.

This defendant did not have, at the time of the wrongs complained of, and has never had any control or direction or any right of control or direction over any of the other defendants or any persons or organizations or any project in Sunflower County, Mississippi, nor has this defendant ever engaged in any venture of any kind in Sunflower County, Mississippi. Therefore this defendant has been improperly joined, as a matter of law, as a defendant in this action.

Wherefore, defendant prays that the declaration be dismissed with prejudice as respects this defendant and that defendant be awarded its costs herein.

s/ ____________________
R. Jess Brown
Alvin J. Bronstein
603 N. Farish St.
Jackson, Mississippi

Attorneys for defendant
Congress of Racial Equality

Of Counsel:

Carl Rachlin
38 Park Row
New York, N. Y.

## CERTIFICATE OF SERVICE

I certify that on this 18 day of March, 1966, I served a copy of the foregoing Answer upon L. H. Rosenthal, 406 West Capitol St., Jackson, Mississippi, attorney for plaintiff, by first class mail, postage prepaid.

s/ ____________________
Attorney for Defendant
Congress of Racial Equality

mule files

LAWYERS CONSTITUTIONAL DEFENSE COMMITTEE
OF
THE AMERICAN CIVIL LIBERTIES UNION
SOUTHERN OFFICE
603 NORTH FARISH STREET, JACKSON, MISSISSIPPI 39202
(601) 948-4191
ALVIN J. BRONSTEIN, STAFF COUNSEL

MAR 21 1966

March 18, 1966

Carl Rachlin, Esq.
CORE
38 Park Row
New York, N. Y.

Dear Carl:

Enclosed find copies of the pleadings in the 2 new cases againt CORE that we discussed on the phone.

Best regards.

Sincerely,

Alvin J. Bronstein

AJB:jb

---

TO
CARL RACHLIN
38 PARK ROW MAR 18 1966
N.Y., N.Y.

File
Sunflower
Colored
Baptist
vs
King

FROM

SUBJECT
SUNFLOWER COLORED BAPTIST ASS. VS. KING, ET AL.

DATE
3-11-66

MESSAGE:
-AL BRONSTEIN ASK THAT I SEND YOU A COPY OF THE MEMO WHICH CHARLES McLAURIN SIGNED IN CONNECTION WITH THE ABOVE STYLED SUIT. I SAID THAT I WOULD BUT AFTER CHECKING MY FILES I FIND THAT I SENT THE ONLY COPY WHICH I HAD TO HOWARD MOORE.

THE NOTE WAS SIMPLY A NOTE IN THE FORM OF A

ORIGINATOR-DO NOT WRITE BELOW THIS LINE REPLY TO → SIGNED

REPLY
PROMISSORY NOTE BY WHICH HE PROMISED TO PAY TO THE PLAINTIFF $6,000.00. ALTHOUGH THE NOTE IS LEGALLY NOT BINDING HOWARD MOORE DID ON 2-17-66 SAY THAT HE RECOGNIZE SNCC HAD A MORAL OBLIGATION TO PAY THE SUM.

DATE

SIGNED
L. H. Rosenthal

SEND PARTS 1 AND 3 INTACT-PART 1 WILL BE RETURNED WITH REPLY

RM-87

RETURN TO ORIGINATOR

MSS SEDFRE
546

LACEY, ARCHIE, L. VS. BOARD of HIGHER EDUCATION NEW YORK 1968

Box 38
Folder 14

State Historical Society of Wisconsin

Please Retain Original Order

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IN THE MATTER OF THE APPLICATION OF
ARCHIE L. LACEY

**PETITIONER**

FOR A JUDGMENT UNDER ARTICLE 78 OF THE
CIVIL PRACTICE LAW AND RULES GRANTING
PETITIONER A HEARING, RESTRAINING
RESPONDENT AND NULLIFYING AND SETTING
ASIDE ALLEGED APPOINTMENT OF DEPARTMENTAL
CHAIRMAN AND GRANTING HEARING TO PETITIONER

AFFIDAVIT

AGAINST

BOARD OF HIGHER EDUCATION OF THE CITY
OF NEW YORK, LEONARD LIEF, & RITA O'HARE

RESPONDENTS

---

STATE OF NEW YORK

COUNTY OF NEW YORK

ISAAC G. McNATT, being duly sworn, deposes and says:

1. That he is the attorney for the petitioner in the above entitled proceeding and is familiar with the facts and circumstances of same, as related to him by petitioner and by other persons having knowledge of the facts.

2. That he prepared the petition based on such knowledge and information, and that your deponent has actual knowledge of those matters relating to the writing of letters to the Board of Higher Education by deponent requesting a hearing on two separate occasions, and that no answer was received, and that deponent was advised that the matter of a hearing was now academic since the executive committee of the Board of Higher Education had approved and confirmed the appointment referred to in the petition, all as set forth in the said petition, and that the said matters are true to the knowledge of this deponent. That your deponent believes and has so advised the petitioner, that petitioner has a meritorious cause of action, and that this proceeding is brought in good faith by petitioner to secure to him those rights to which he is entitled under the Education Law of the State of New York,

Under the By-Laws of the Board of Higher Education, and under the other applicable laws and constitution of this State and of the nation.

3. That unless a stay is granted, pending the determination of petitioner's application, that any relief thereafter granted may be of no real effect and without menning. Consequently, your deponent joins in the prayer of petitioner for the relief herein sought for a stay pending determination of the application and for such other relief as may be proper.

ISAAC G. McNATT

Sworn to before me this
22nd day of June, 1968

[illegible]
Notary Public, State of New York
No. 31-1952693
Qualified in New York County
Commission Expires [illegible]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IN THE MATTER OF THE APPLICATION OF
ARCHIE L. LACEY

PETITIONER

FOR A JUDGMENT UNDER ARTICLE 78 OF THE
CIVIL PRACTICE LAW AND RULES GRANTING
PETITIONER A HEARING AND RESTRAINING
RESPONDENT AND NULLIFYING AND SETTING
ASIDE ALLEGED APPOINTMENT OF DEPARTMENTAL
CHAIRMAN AND GRANTING HEARING TO PETITIONER

PETITION

AGAINST

INDEX # 10159-1968

BOARD OF HIGHER EDUCATION IN THE CITY
OF NEW YORK, LEONARD LIEF, & RITA O'HARE

RESPONDENTS

---

TO: THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

The petitioner above named, by ISAAC G. McNATT, his attorney, for his petition herein, respectfully shows and alleges that:

1. Petitioner is a citizen of the United States and is an Associate Professor of Education, employed on the Bronx campus of Hunter College.

2. Petitioner has been employed for a period of eight years at Hunter College, and is presently serving as president of the college chapter of the American Association of University Professors for the Bronx campus of the college, is one of five members of the faculty executive committee, and is one of four members of the personnel and budget committee of the Department of Education. Petitioner is also author of two books in Science and Teacher Education, and author of several professional papers.

3. The Bronx campus of Hunter College will become an independent college, under the name of Herbert H. Lehman College, effective July 1, 1968.

4. The respondent, Board of Higher EDucation in the City of New York, is a body corporate, duly established and existing by virtue of the education law of the State of New York and has reponsibility for the operation and administration of the

public institutions of higher education in the said City of New York, subject to the statutes made and provided, and further subject to the By-Laws of the Board of Higher Education.

5. The respondent, Leonard Lief, is provost of the Bronx campus of Hunter College, hereinafter referred to as Lehman College, acting in the capacity of president, and is the chief executive officer of the said college.

6. The respondent, Rita O'Hare, is an assistant professor, junior in service, experience, tenure and professional achievement to petitioner, but who was appointed acting dean to the Department of Education by respondent, Leonard Lief, and who was recommended for appointment by him as chairman of the Department of Education. It is significant at this point to also state that petitioner, by way of racial identification, is black, whereas the respondent, Rita O'Hare, is white.

7. The By-Laws of the Board of Higher Education, under which the college operates, or is supposed to operate, provides, in part, as follows:

"Article 9, Section 9.1 Subdv. (B). The executive officer of the department shall be the department chairman who shall be a person of professorial rank, elected by secret ballot for a term of three years except as provided below, by a majority vote of all the members of the instructional staff of the department who are members of the faculty and who are not on leave from the college......such election shall be subject to the subsequent approval of the president and the Board."

8. Section 9.5 of said By-Laws further provide, in part ......"Tie votes in the election of a department chairman or representation of department committees on personnel and budget or committees on appointment on the faculty council shall be resolved by action of the president."

9. On or abour December 6, 1967, I conferred with provost Lief and stated to him that I would like to be considered for the

position of dean of Teacher Education. The Provost expressed doubt that anyone in the department was qualified, and stated that there was no one in the department with full professorial rank. I pointed out to the Provost that I was the senior associate professor in the department, with four years in that rank. I further expressed to the Provost my belief that I could be elected as Departmental Chairman.

10. On or about February 4, 1968, I wrote a letter to Dr. Lief, submitting my curriculum vita, and applying for the position of Dean of Teacher Education. Incidentally, it has been the practice throughout the City University that the person elected as Departmental Chairman is also appointed Dean. My position was that of a canidate for the election of Departmental Chairman and a candiate for appointment for the position of Dean. A copy of the said letter is attached hereto and made a part hereof.

11. Prior to my sending said letter, and on or about January 12, 1968, the Education Department had chosen me as one of the nominees to stand for election to the Search committee for a Dean. On January 15th, I conferred again with Provost Lief concerning my candicacy for Dean of Teacher Education. I asked him whether I should stand for election to the search committee, since I was an active applicant for the position. He advised against it, stating that he was perfectly ready to consider me for the position but that my being on the search committee would put me in an embarrassing position. Incidentally, it should be noted that Dr. O'Hare, who was subsequently appointed Dean, was member of the search committee.

12. On March 20, 1968, I again conferred with Provost Lief to discuss the status of my application for the position of Dean. I told him that a rumor had been going around that he was about to appoint an acting dean before the department elected

its chairman. I expressed the fear that if he did so, the Education Department would, in effect, be disenfranchised as to the dean since the person elected as chairman is, in practically all cases, appointed dean. He further stated that he would be back in touch with me after he consulted with the search committee.

13. On or about April 4, 1968, the Education Department was circularized with a notice that the department had been summoned to a call meeting at 1:oo P.M. on Monday, April 8th, with the Dean of Faculty, Dr. James Kreuzer. The purpose of the meeting was not given in the notice, nor was I able to find out, through inquiry at the central office, what would be on the agenda.

14. On April 8, 1968, I was advised by Dr. Rita O'Hare, respondent, that she had been appointed Associate Dean of Faculties, and that Dean Kreuzer would come to the department to make this announcement at 1:00 P.M.. I then conferred with Dean Kreuzer who advised me that I was no longer being considered as a candidate for that position, since the search committee was not enthused by my candidacy. I asked the Dean if he did not think the announcement of such an appointment, coming two days before the election of a departmental chairman, would not unfairly influence the vote. He said "no, they were allowing the vote to proceed, but hoped to get the department to see that it is best to have only one position".

15. At 1:00P.M. on April 8th, 1968, the Dean of Faculties did come before the department at the specially called meeting. He announced the appointment of Dr. O'Hare as Associate Dean, stating that it would be on a temporary basis. He further advised the meeting that if Dr. O'Hare should beeelected department chairman, she would hold both the position of Dean and Chairman. He further advised that if any other person should be elected chairman, that that that other person would not be dean. Petitioner and Dr. O'Hare were the only candidates for chairman.

16. That thereafter, and on or about the 10th day of April, 1968, an election was held, by secret ballot, for the position of Departmental chairman. The results of that vote was a tie vote, 15 votes each for petitioner and for respondent, Dr. O'Hare, and 1 abstention.

17. Subsequently, the Provost, respondent Leonard Lief, submitted the name of Dr. O'Hare to the Board of Higher Education for approval. According to the best information available to petitioner, such appointment was to be acted upon by the Board on May 27, 1968, at its regular monthly meeting.

18. Prior to the said May 27th meeting, your petitioner retained counsel, Isaac G. McNatt, Esq., of 848 St. Nicholas Avenue, New York City, and asked the said attorney to request a full hearing before the Board of Higher Education before the Board acted on the recommendation of the Provost. I am informed by my said attorney that he did make such a request in writing and did deliver it to a member of the Board of Higher Education, to be submitted to the Board at its meeting later on in the day of May 27th. Your petitioner believes thatthe Board should refuse to confirm the appointment because of the irregularities and violations of the By-Laws hereinbefore recited, evidencing racial discrimination practiced by the respondent, Board of Higher Education and Provost Leonard Lief. A copy of the said letter is hereto attched and made a part hereof.

19. Thereafter, your petitioner learned that the respondent, Board of Higher Education, did not act upon the recommended appointment on May 27th. From all that your petitioner has been able to ascertain, the said item was not on the agenda of that meeting. Your deponent learned later that the executive committee of the Board of Higher Education was to consider the matter on June 11, 1968.

20. On or about the 4th day of June 1968, petitioner saw Dr. Lief and was advised that they must have another conference before June 11th. He then made an appointment for me to see him on Friday, June 7th. However, on the day before the said appointment, petitioner was called by the office of the Provost and informed that another ~~the~~ appointment must be made.

21. On ar abour June 12, 1968, respondent Lief announced to a meeting of the Personnel and Budget Committee that the Board of Higher Education had upheld his position and that respondent, Dr. Rita O'Hare, had been confirmed in her post.

22. Since your petitioner had had no response from the respondent, Board of Higher Educaion, regarding his letter of May 27th, I then contacted my attorney and requested that another attempt be made to secure a hearing, prior to the effective date of the appointment of Dr. O'Hare, July 1, 1968. My attorney then worte another letter to the Board of Higher Education, directed to its chairman, Mr. Porter R. Chandler, dated June 17, 1968. Acopy of the said letter is hereto attached and made a part hereof.

23. I have been advised by my said attorney, Isaac G. McNatt, that he has not received any written reply to either of the said letters. I am further advised that he called the Board of Higher Education on or abour June 19th 1968 and inquired if a hearing would be granted. He was advised that a hearing would be academic, since the executive committee had already acted to confirm the appintment which the executive committee had power to do, and that the appointment would become effective for the year July 1, 1968 through June 30, 1969. My said attorney was further informed, on information and belief, that no further action was planned or contemplated by the respondent Board of Higher Education.

24. The education law of the State of New York provides as follows: Section 6202, Subdv 5. "The Board shall establish positions departments, divisions and faculties; appoint and in accordance with the provisions of law, fix salaries of teachers and other employees therein......."

25. The By-Laws of the Board of Higher Education state in part as follows:

Section 9.1, Subdv (c) "In any case where the president does not approve the election of a department chairman, he shall confer with the department and thereafter shall report to the Board any subsequent action by the department with respect thereto, together with his own recommendation of a chairman. The recommendation by the president to the Board for the designation of department chairman should take place only after careful consideration by the president of the qualifications of those selected by the respective departments. The president should base his recommendation on the capacity of the individual selected to act as departmental administrator and spokesman and as a participant in the formation, development, and interpretation of the college-wide interests and policy"

Though the above provision speaks of disapproval of an election by the president, by analogy the same provision would apply to acase in which there is a tie vote. The president must use the same criteria, and not act arbitrarily or capriciously in making any such recommendation.

26. Unless respondents are enjoined, both the position of Departmental Chairman and Associate Dean of Faculties will be filled by respondent, Dr. Rita O'Hare, on July 1, 1968. Petitioner will thus be deprived of his rights under the Education Laws and under the laws and constitution of this State and country. By reason of the statutory and by-law provisions above cited, the action of the respondent Provost Lief is arbitrary, capricious and illegal, in that the best qualified person was not recommended.

He failed to appoint petitioner Dean, or to recommend him for departmental chairman, because of his race.

Failed to consult with, or seek recommendation of search committee.

Advised petitioner not to sit on search committee, but appointed person who did sit onthat committee.

Unfairly and substantially prejudiced the vote of the department by announcing, two days before the vote for departmental chairman, that a person, not an applicant for the departmental chairman, had been appointed Associate Dean; that if that person should be elected Departmental Chairman, she would hold both positions; but that if any other person should be elected Departmental Chairman, that such other person would not be Dean.

Provost made recommendation in the case of a tie vote, without regard to the qualifications of the persons so recommended, as compared to the the qualifications of the petitioner. The qualifications of petitioner were superior in several respects to those of the person recommended for appointment.

27. The respondent, the Board of Higher Education, failed to perform a duty enjoined upon it by law, in that it failed to approve or to confirm the appointment of respondent Rita O'Hare, to the position of Departmental Chairman. The statutes specifically state that the Board shall appoint employees, and the By-Laws require that the Board shall approve election of Departmental Chairman.

28. The determination that respondent, Rita O'Hare, is now associate dean of faculties, to be effective July 1, 1968, was made in violation of lawful prodedure, was affected by an error of law, and was arbitrary and capricious because of the irregularities hereinablove set forth, and further because of the failure and refusal of respondent, Board of Higher Education, to grant a hearing to petitioner, or to even acknowledge receipt of his requests. Said respondent could have, at a hearing

corrected the errors hereinbefore alleged, but failed to do so.

29. Petitioner is applying for an order to show cause in this matter instead of proceeding by notice of petition, because the respondents proposed that the said appointments hereinabove referred to shall become effective on July 1, 1968, and petitioner desires a stay thereof, at least until respondent, Board of Higher Eduation, can grant petitioner a full hearing and make an official determination as to whether the said errors and irregularities recited herein have affected the validity of the proposed appointment, and pending the determination of this application.

30. No previous application for the relief herein requested has been made to any other court or judge.

WHEREFORE, petitioner requests that an order to show cause in the form annexed issue out of and under the seal of this court; and that a final judgment be made that respondent, Dr. Rita O'Hare, has not been legally and validly appointed to the position of Associate Dean of Faculties, or to the position of Chairman of the Department of Teacher Education; and directing that petitioner be appointed to such positions, or in the alternative that a full plenary hearing be granted petitioner before the respondent, Board of Higher Eduation, as requested by his previously on two separate occasions; that pending the determination of this application, a temporary stay issue an described above; and that the petitioner be granted such other and further relief as the court may deem just and proper in the premises.

ARCHIE L. LACEY

Dated: June 22nd, 1968

Yours, etc.,
ISAAC G. McNATT, Esq.
Attorney for Petitioner
Office & P. O. Address
848 St. Nicholas Avenue
New York, N. Y. 10031
Tel. AU. 3-2400

STATE OF NEW YORK
COUNTY OF NEW YORK

ARCHIE L. LACEY, being duly sworn, deposes and says that he is the petitioner in the above entitled proceeding; that he has read the contents thereof and that the same are true except as to those matters alleged to be on information and belief, and that as to those matters he believes it to be true.

Sworn to before me this
22nd day of June, 1968

ISAAC G. McNATT
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-2636050
Qualified in New York County
Term Expires March 30, 1969

ARCHIE L. LACEY

corrected the errors hereinbefore alleged, but failed to do so.

29. Petitioner is applying for an order to show cause in this matter instead of proceeding by notice of petition, because the respondents proposed that the said appointments hereinabove referred to shall become effective on July 1, 1968, and petitioner desires a stay thereof, at least until respondent, Board of Higher Eduation, can grant petitioner a full hearing and make an official determination as to whether the said errors and irregularities recited herein have affected the validity of the proposed appointment, and pending the determination of this application.

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ARCHIE L. LACEY

Dated: June 22nd, 1968

Yours, etc.,
ISAAC G. McNATT, Esq.
Attorney for Petitioner
Office & P. O. Address
848 St. Nicholas Avenue
New York, N. Y. 10031
Tel. AU. 3-2400

STATE OF NEW YORK
COUNTY OF NEW YORK

ARCHIE L. LACEY, being duly sworn, deposes and says that he is the petitioner in the above entitled proceeding; that he has read the contents thereof and that the same are true except as to those matters alleged to be on information and belief, and that as to those matters he believes it to be true.

Sworn to before me this
22nd day ofJune, 1968

ISAAC G. McNATT
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-2636050
Qualified in New York County
Term Expires March 30, 1969

ARCHIE L. LACEY

[Enclosed, McNatt to Rachlin, 1968, July 2]

At a Special Term, Part II, of the
Supreme Court of the State of New
York, held in and for the County of
New York, at the Courthouse, 60
Centre Street, on the 27th
day of June, 1968

PRESENT:
HONORABLE Joseph A. Brust

Justice

IN THE MATTER OF THE APPLICATION OF
ARCHIE L. LACEY

PETITIONER

FOR A JUDGMENT UNDER ARTICLE 78 OF THE
CIVIL PRACTICE LAW AND RULES GRANTING
PETITIONER A HEARING, RESTRAINING
ASIDE ALLEGED APPOINTMENT OF DEPARTMENTAL
CHAIRMAN AND GRANTING HEARING TO
PETITIONER

ORDER TO
SHOW CAUSE

AGAINST

Index # 10159-1968

BOARD OF HIGHER EDUCATION OF THE CITY OF
NEW YORK, LEONARD LIEF, & RITA O'HARE

RESPONDENTS

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Upon the annexed petition of ARCHIE L. LACEY, sworn to on the 22nd day of June, 1968, and the affidavit of ISAAC G. McNATT, sworn to on the 22nd day of June, 1968, and upon the exhibits annexed thereto, and sufficient cause being shown therefor,

Let the respondents, The Board of Higher Education in the City of New York, Leonard Lief and Rita O'Hare, show cause at a Special Term, Part I of this court, to be held at the Courthouse thereof, located at 60 Centre Street, Borough of Manhattan, City and State of New York, on the 28th day of June 1968, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why an order should not be made pursuant to CPLR 78 granting petitioner a hearing, nullifying and setting aside an alleged appointment of respondent Rita O'Hare as Chairman of the Department of Teacher Education at Herbert H. Lehman College, and restraining respondents from making such alleged appointment effective pending the determination of this application on the ground that such action was arbitrary, capricious and illegal, was made in violation of lawful procedure in that the Board of Higher Education failed to perform a duty enjoined upon it by law, and why petitioner should not have such other and further relief as may be just, proper and equitable;

and Sufficient reason appearing therefor, let service of a copy of this order, together with the papers on which it was granted, upon each of the respective respondents, at their places of residence or their usual place of business, on or before the 25th day of June 1968, be sufficient service. and it is further

Enter:

Justice Supreme Court of the
State of New York

June 5, 1968

Provost Leonard Lief
Herbert H. Lehman College
Hunter College in the Bronx of the
City University of New York
Bedford Park Boulevard West
New York 68, N. Y.

Dear Provost:

To our attention has come the question of an important member of the board of this organization, Professor Archie Lacey. In no way is it our intention or responsibiliby to interfere with the internal affairs of an institution of higher education. But the matter of Professor Lacey, a man of high competence and qualification, is so extraordinary that we feel impelled to write to you and express our concern.

The number of deans who happen to be Negro is very small. When one as skilled and experienced as Professor Lacey is passed over, it is a matter of concern not only to Hunter College and the City University but to the entire public interested in education, as is this organization, as can be seen from our letterhead.

We trust that this matter can be resolved in such a way as to give Professor Lacey the recognition due him and the school the benefit of his able services.

Very truly yours,

Carl Rachlin
Legal Director

le

HUNTER COLLEGE IN THE BRONX
OF THE CITY UNIVERSITY OF NEW YORK
BEDFORD PARK BOULEVARD WEST
BRONX, NEW YORK 10468

June 18, 1968

Office of the Provost

Mr. Carl Rachlin
Legal Director
Scholarship, Education and Defense
Fund for Racial Equality Inc.
164 Madison Avenue
New York, N. Y. 10016

Dear Mr. Rachlin:

I have your letter of June 5. I appreciate your concern and I want you to know that our concern, like yours, is to see that the educational needs of our young men and women are filled. Thank you for your interest.

Sincerely yours,

Leonard Lief

Leonard Lief
Provost

LL:sf

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MEMBER OF NEW JERSEY BAR

ISAAC G. MCNATT
ATTORNEY AT LAW
848 ST. NICHOLAS AVENUE
NEAR 152ND STREET
NEW YORK, N. Y. 10031
212 AUDUBON 3-2400

July 2, 1968

Carl Rachlin, Esq.
150 Nasau Street
New York, New York

Dear Sir:

Enclosed please find petition, affidavit and order to show cause. The case was adjourned to July 12th, hearing to be held before the Local Board before that date, and answer to be served by July 9th. Will keep you advised. Thanks for everything.

Very truly yours,

Isaac G. McNatt

IGM:sas
Isaac G. McNatt

Official minutes of 4/8/68

HUNTER COLLEGE IN THE BRONX
CITY UNIVERSITY OF NEW YORK

Minutes of: Special Meeting of the Education Department Faculty

Date: Monday, April 8, 1968 in Room 1-333

Time: Professor Mary Rita D. O'Hare called the meeting to order at 4:05 P.M.

## Announcement by Dean Kreuzer

Provost Lief was at a meeting of the Administrative Council during our Department meeting; he had asked Dean Kreuzer to inform the Department of the following:

1. The Search Committee which is looking for a Dean of Teacher Education will be continuing to seek outside the department and outside the College. It has interviewed a number of candidates but has not come to a consensus about any candidate thus far; the Committee has not taken any formal vote.

2. For the interim period the Provost has appointed Rita O'Hare (Acting) Associate Dean of the Faculties for Teacher Education. She is not a candidate for the Deanship and will not be a candidate. She will serve for the coming academic year or until the appointment of a Dean.

   The Provost would like the Department to hold a normal election for the Chairman. The statements early this year of not separating the Deanship from the Chairmanship do not hold for this interim period.

3. The Provost has said that if we wanted to talk with him, he would be glad to come to our meeting on Wednesday.

## Question and Answer Period

The following questions (Q) were asked by various faculty members, and answered (A) by Dean Kreuzer as follows:

Q: If Rita is not elected Chairman, what would happen?

A: It is my understanding that the Provost would accept the election. I think that if there are two people, the two people will have to work out some modus operandi.

Q: If the administration wants normal procedure to take place, why did we receive this abnormal announcement?

A: The Provost wanted Rita to serve as Dean for continuity of department functioning.

Q: Will the Acting Associate Dean of Faculties vote on P & B?

A: Well, I'll have to think about that.

Minutes of Special Meeting of the Education Department Faculty, April 8, 1968.

Q: How many people has the Search Committee interviewed?

A: Four.

Q: Are we sending any representative to interview away from the campus?

A: No, not at the present time.

Q: How many applicants have there been?

A: About fifteen.

Q: If the Department will be left with a Dean and a separate Chairman, what are the responsibilities of each; and is this a precedent?

* A: No, this will not be a precedent. The responsibilities would be spelled out by the Provost, the Associate Dean, the Chairman, and me.

Q: Is it the Provost's desire that no one be selected from Hunter uptown or downtown?

A: Yes. Why? AH

Q: Since the Search Committee has not come to any decision, how could such a statement be made?

A: The Committee is an advisory committee only. The Committee did not have a unanimous consensus for anyone.

* Q: In terms of delineating the responsibilities of both, is there any guidepost that we would have to help us? It bothers me deeply that a democratic process has not had free reign. I should think that Provost Lief should reconsider; otherwise we will have more problems. It is not respecting the rights of professional people. At this point it is confusing what we are voting on.

A: I'll answer: This is precisely what goes on in other departments... I could not function as a Dean unless I am directly responsible to the President of the College.

* Q: I am reacting to a process which is undemocratic. We should have the right that any other department has.

A: The right to your election is not being withheld. When the Provost finds a Dean, I hope it will be with the approval of the Department.

Q: How long will the temporary appointment last?

A: Just one year, we assume. Rita will serve until the new Dean is found.

Q: Why is the appointment called the Associate Dean of Faculties?

A: It is up to the Provost to decide on College administrative structure.

## HUNTER COLLEGE IN THE BRONX

## Minutes of Special Meeting of the Education Department Faculty, April 8, 1968

Q: May I suggest that we add two or three additional members to the Search Committee, preferably from this Department?

A: I'll pass this on to the Provost.

✱ Q: Why did the Provost make this appointment two days before the election?

A: It was his judgment that during the interim period, he wanted Rita to serve. why? AH

✱ Q: Are we to assume that Archie Lacey is no longer being considered for the Deanship by you or the Provost?

✱ A: Yes. why?

Q: Is the Provost planning to come to our meeting on Wednesday?

A: He will only come if he is asked to.

Q: Is it possible that this election might be for six months if you bring in a Dean in February?

A: No. The elected Chairman may resign or he and the Dean could work together until the year is out.

Q: Does the Search Committee take a vote?

A: We have not done so yet. When we finish, we might, and then come up with a slate of three people in alphabetical order or in rank.

Q: It there a possibility that this nondemocratic process is to continue?

✱ A: This is necessary in this situation. The President must appoint his own deans; he appoints them after much consultation. The President did not see this interim appointment as one in which he had to consult with the Department. why?? AH

✱ Q: How was the decision made that Professor Lacey should not be considered for the Deanship?

✱ A: The decision was made by the Provost and it is his business entirely.
on what basis?

Q: What is meant by a majority of voting members: If we have 32 voting members, would we need 17 votes to elect a Chairman? The by-laws are not clear.

A: With 32 voting members, you would need 17.

HUNTER COLLEGE IN THE BRONX

Minutes of Special Meeting of the Education Department Faculty, April 8, 1968

Q: When will the new Chairman and new P & B take office?

A: July 1.

Q: Will faculty going downtown vote with us?

A: I assume people who will not be here, will not vote on matters affecting us here.

Respectfully yours,
Leah Z. Price
Secretary

rc
4/15/68

unofficial minutes of meeting of 4/8/68

## SUMMARY OF EDUCATION DEPARTMENT FACULTY MEETING WITH DEAN KREUZER

April 8, 1968

Special meeting of the Department of Education

A special meeting of the faculty of the Department of Education was announced by Prof. Mary Rita O'Hare on Thursday, April 4, 1968. The meeting was scheduled for Monday, April 8, at 1:00 P.M.

The meeting of the faculty of the Department of Education convened at 1:00 P.M. Professor O'Hare announced that Dean Kreuzer wished to address the faculty.

Professor O'Hare appointed Acting Associate Dean of Faculty

Provost Lief decided to go outside the college in the search for Dean of Teacher Education

Dean Kreuzer announced that Professor O'Hare had been appointed Acting Associate Dean of the Faculty. He also stated that this decision had been made by Provost Lief after considering conditions within the Department of Education. Dean Kreuzer further stated that Provost Lief made this appointment on an interim basis. Professor O'Hare was appointed, Dean Kreuzer stated, because of the importance of continuity in this position. Dean Kreuzer added that it had been decided to go outside the college to search for a Dean of Education after consulting with members of the Search Committee. Professor Krash, a member of the Search Committee elected by the Department of Education, stated that he had not been consulted about the the decision to go outside the college. Dean Kreuzer stated that he knew Professor Krash's position in this matter.

Elected departmental representatives the search committee not consulted.

Professor Krash then asked Professor Muriel Farrell, another member of the Search Committee elected by the Department of Education, if she had been consulted concerning the decision to go outside the Department in the search for the Dean of Education. Professor Farrell replied that she had not been consulted nor had she offered her advice in this matter.

Dean Kreuzer stated, nevertheless, that he had consulted with members of the Search Committee. He specifically mentioned Professor Mary Jane Kingkade as one of the members of the Search Committee with whom he consulted. No other members of the Committee were named.

Professor Lacey not being considered for Dean of Teacher Education.

Professor Bucchioni then asked Dean Kreuzer: Are we to assume, then, on the basis of what was said about going outside the Department in the search for a Dean of Education that Professor Lacey is not being considered for the position. Dean Kreuzer said that Professor Lacey is not being considered for the position.

Search Committee did not vote

Provost Lief decided that Professor Lacey would not be considered for the Dean of Teacher Education.

Professor Bucchioni then asked if there had been an official vote or polling of the Search Committee concerning the decision that Professor Lacey would not be considered for the position of Dean of Teacher Education. Dean Kreuzer stated that there had not been an official vote or polling of the Search Committee. Professor Bucchioni then asked how and by whom the decision was made. Dean Kreuzer stated that he was being "pushed", but that he would answer the question. He stated that Provost Lief made the decision that Professor Lacey would not be considered for the position.

Dean Kreuzer was also asked why this announcement concerning the appointment of Professor O'Hare was made two days before the election of the chairman of the Department. He was also asked if this announcement would affect the results of the election for chairman. Dean Kreuzer said that the announcement might or might not affect the results of the election.

Objections to procedure

Several objections were raised. Professor Hurewitz spoke about the circumventing of the Search Committee and the announcement being made two days before the election for chairman as a abrogation of democratic procedures and an attempt to influence the election.

Professor Bailey objected to the lack of faculty consultation as a violation of democratic procedures. Would such undemocratic procedures continue? What did the union members have to say about this? Dean Kreuzer replied that he did not know what union members would say.

Professor Kravets stated that many members of the Department had nationwide responsibilities and recognition and that they were not being treated as responsible faculty members.

Professor Movesian expressed his concern over what seemed to be the circumventing of democratic procedures.

If Professor O'Hare is elected chairman she will also be Acting Associate Dean

If Professor Lacey is elected chairman, Professor O'Hare will also be Acting Asso. Dean

Professor Bucchioni asked Dean Kreuzer what the election of a chairman different from the appointed Acting Dean would mean. Dean Kreuzer replied that the chairman and the Dean of Teacher Education are one and the same person. Dean Kreuzer stated that Provost Lief hoped that this would continue to be true. Dean Kreuzer stated that If Professor O'Hare were elected chairman she would also be Acting Dean, but if Professor Lacey were elected chairman, Professor O'Hare would continue to be Acting Dean. In this case, there would be a separation of the two positions.

Professor Krash stated: The Department should be clear about two things. The announced appointment is an administrative interference with the normal election procedures of the Department. When Dean Kreuzer reported the "sense" of the Search Committee "after consultation" with members of the committee the confidential character of the Committee was broken. In any event, Professor Krash continued, the report of the "sense" of the search committee is false inasmuch as the two elected representatives of the Department who are on the Search Committee were not consulted.

Objections to procedures

Professor Bucchioni asked Dean Kreuzer if he and Provost Lief were aware of the many irregularities and disruptions in the Department, including a walkout from a faculty meeting by many nonvoting members of the Department. Were they (Dean Kreuzer and Provost Lief) aware that many members of the Department of Education had lost confidence in the present administration of the Department of Education. Dean Kreuzer said they were aware of this. Dean Kreuzer was then asked if this was a way of unifying the Department. Dean Kreuzer did not reply to this question.

Objections to procedures

Professor Grossman stated that she doubted the interim nature of the appointment, that we were just being told this, just as we were told in September and October that the Personnel and Budget Committee was a "shadow" committee, elected by voting members and non voting members of the Department. This shadow Personnel and Budget Committee then became the real Personnel and Budget Committee. She expressed concern that this situation would be repeated in the sense that an "interim appointment" would probably become permanent after some time had elapsed.

The meeting adjourned at 2:00 P.M.

# IRREGULARITIES ATTENDING THE ABORTION OF PROFESSOR LACEY'S CANDIDACY FOR DEAN OF TEACHER EDUCATION AT LEHMAN COLLEGE

1. Professor O'Hare was appointed by Provost Lief to the Search Committee for a Dean of Teacher Education and was subsequently appointed Acting Dean.

2. Professor Lacey was advised by Provost Lief that he should not stand for election to the Search Committee since he was a candidate for the position.

3. Professor O'Hare was appointed Acting Dean although she was not an avowed candidate and had sat in judgment of other candidates.

4. Neither the Provost, the Dean nor the Search Committee ever asked Professor Lacey to submit letters of reference attesting to his professional competency and qualifications for the position, even though he offered any further information that might be requested by either.

5. Professor Lacey's candidacy for the position was rejected by Provost Lief with out any official consultation with the members of the Search Committee.

6. Professor Lacey's candidacy for the position was terminated by Provost Lief before all prospective applicants had submitted their credentials and had been interviewed. The elimination of Professor Lacey from consideration for the Dean of Teacher Education at this time means that his credentials will not be evaluated comparatively and competitively with the credentials of all other candidates for the position.

7. The announcement of Professor O'Hare's appointment as Acting Associate Dean of Faculty two days before the election was irregular in that the full weight of the Provost's office and the office of the Dean of Faculty, and the office of the Acting Associate Dean of Faculty were supporting Professor O'Hare's candidacy.

   The election for chairman was a tie:

   15 votes for Professor O'Hare
   15 votes for Professor Lacey
   1 abstention

8. The coming of the Dean of Faculties to the Department constituted gross interference with the election process in the following ways:

   a) He disregarded Professor Lacey's advice to wait until after the elections to announce Professor O'Hare appointment.

   b) It prejudiced the choice between the candidates by announcing Professor O'Hare's appointment and stating that neither she nor Professor Lacey could serve in the position after a year.

   c) He misrepresented the views of the Search Committee which was presumably searching for a Dean of Teacher Education

9. During the meeting Dean Kreuzer specifically stated that the Dean of Teacher Education and the chairman of the Department of Education were generally one and the same and that Provost Lief hoped that it would continue that way. He stated that if Professor O'Hare was elected chairman, she would also be Acting Associate Dean. However if Professor Lacey were elected chairman of the Department Professor O'Hare would still be Acting Associate Dean. There would then be two positions chairman and Acting Dean.

## Some Specific Irregularities Visa Vis The Search Committee

1. Neither the Provost nor the Dean actually consulted the Committee about getting a Dean from inside or outside the college.

2. Neither the Provost, the Dean, nor the Search Committee saw or requested Professor Lacey's Hunter Files. No letters of reference were requested.

3. No Negro Colleges or other black agencies were canvassed for possible candidates for the position.

4. The views of the two members of the Search Committee who were elected by the Education Department were totally unsolicited, and ignored in the process of arriving at the decision to appoint Professor O'Hare Acting Dean.

5. The Dean admitted in the call meeting that the decision to eliminate Professor Lacey as a candidate was a unilateral one by the Provost.

6. The Search Committee never actually searched. They interviewed only four candidates, including Professor Lacey, between March 1, and April 25, 1968.

My letter of application. ALL

168 Stuyvesant Road
Teaneck, New Jersey 07666
February 4, 1968

Dr. Leonard Lief, Provost
Hunter College in the Bronx
of the City University of New York
Bronx, New York 10468

Dear Dr. Lief:

As you know, I have expressed interest in being considered for the position of Dean of Teacher Education at Lehman College.

I believe that my professional preparation and my experience at Hunter and at other institutions qualify me for the position.

I realize well that the many tasks such as (1) giving direction and leadership to a "new" program, (2) transforming an "old" program into a dynamic and community-oriented new one, (3) reducing tensions and frustrations in a growing and unstable department, (4) working effectively with more than twenty liberal arts departments, and (5) making professional education a more positive influence in the college, the community, and the nation are mammoth. I feel confident, however, that I could perform these tasks to yours, the Department's, and the College's satisfaction.

Since Professor O'Hare, the Bronx Representative of the Department of Education has announced that you are in the process of forming a search committee for a dean, I am submitting, herewith, my curriculum vita for yours and the Committee's perusal.

I shall be happy to supply any other information that you or the search committee might request regarding my background and my qualifications for the position.

Very truly yours,

Archie L. Lacey
Associate Professor
Department of Education

# SEQUENCE OF CONFERENCES AND SOME EVENTS RELATING TO MY ABORTED CANDIDACY FOR DEAN OF TEACHER EDUCATION AT LEHMAN COLLEGE

Archie L. Lacey
Associate Professor of Education
April 12, 1968

My Eight years at Hunter College

I arrived on the Bronx campus of Hunter College in September 1960 as an Assistant Professor of Education with primary responsibility for secondary science education.

From 1960 to 1964 I taught on a split schedule between the Bronx and Park Campuses.

Denial of opportunity to be Coordinator of Sciences

In the summer of 1964 after the death of the late Professor Abraham Raskin, Coordinator of Sciences, I was transferred to Park Avenue on a full time basis to become Acting Coordinator of Sciences for the Teacher Education Program. A new coordinator was engaged in February 1965, but I was retained in the office"to help the new coordinator adjust to the job". I was allowed to retain a desk in the office until I decided that my services there were no longer desired by Hunter College.

In the spring of 1967, I notified Dean Milton Gold that I would prefer a program at the Bronx campus for the fall term. Dean Gold never acknowledged my letter.

I arrived back on the Bronx campus in September 1967. My first piece of campus mail was a note from Provost Lief asking me to serve on a committee to help name the"new" college. Ironically, the first name on my original list was that of Lehman College - the one finally chosen.

Unquestioned support by colleagues

Following the naming of the College in almost clock-like precision during the ensuing weeks, were several very significant developments which caused me to believe that I should apply for the position of Dean of Teacher Education at Lehman College.

These developments included, among other things

1) Election by the Faculty Council as one of seven faculty members to serve on the College's ad hoc Committee on the Quadrennial Revision of the Master Plan (1968-72),

2) Election by the entire faculty as one of five members to represent them on the Faculty Executive Committee,

3) Election by the Department of Education as one of four members to serve on its Personnel and Budget Committee to review personnel for appointment, tenure, and placement in the Department,

4) Election to the Department's Administrative Structure, Graduate Liaison, and Catalog - Curriculum Committees.

5) Election by peers to serve as president of the College Chapter of the American Association of University Professor, and

6) Verbal encouragement by colleagues from the Education Department and the College at-large to apply for the position of Dean of Teacher Education.

1st Conference with Provost Lief

It was not until Wednesday December 6, that I conferred with Provost Lief and intimated that I would like to be considered for the position of Dean of Teacher Education.

As the Provost and I discussed some of the problems of the Education Department, he intimated that he was thinking about going outside to find a Dean. I told him that that might be a good solution, but if he went outside he must get a very strong and good person for the position but that that was not necessarily the best solution. The Provost asked "Do you honestly believe that there is anyone in the Department who could do the Job?" I answered by mentioning two or three persons whom I had thought could do the job, but suggested that I believe that I, due to my relatively "outside" and marginal status, should be considered for the position.

I told him that "if the election were held today, I believe I could win." He answered "But you don't have any full professors in your department - if you only had some full professors". (I am the senior Associate Professor in the Department with four years in that rank).

Among other things, I reminded the Provost that he had to have it both ways, namely, he had to maintain his right to appoint a Dean, yet he had to give the Department a chance to give the Appointee a vote of confidence.

Question: Considering all of the above facts, WHY WOULD PROVOST LIEF COMPLETELY IGNORE MY CANDIDACY AND APPOINT TO THE ACTING POSITION OF DEAN DR. O'HARE, A RELATIVELY JUNIOR ASSISTANT PROFESSOR WHO MADE NO APPLICATION FOR THE JOB, AND WHO SAT ON THE SEARCH COMMITTEE AS HIS APPOINTEE IN JUDGEMENT OF MY QUALIFICATIONS? Professor O'Hare did not receive a vote of confidence. She received only 15 of 31 votes for the position.

2nd Conference with Provost Lief

On Wednesday December 13, 1967, Provost Lief came before the Education Department to discuss his ideas visa vis the Department and the appointment of a Dean to direct its activities.

In answer to questions, the Provost made the following significant statements:

(1) "I will adequately consult with your Department before appointing a Dean. I will probably appoint a Search Committee with Rita O'Hare as a member."

(2) "I would be an idiot to place someone over this Department who was not acceptable to its members."

(3) "I believe the position of Dean and Chairman must be one . You can't have it both ways. If you insist on electing a chairman then maybe you don't want a Dean".

Questions:

(a) WHY DID NOT THE PROVOST ACTUALLY CONSULT THE SEARCH COMMITTEE MEMBERS? WHY DID HE CHOOSE TO IGNORE THE TWO MEMBERS OF THE COMMITTEE WHO WERE ELECTED BY OUR DEPARTMENT?

(b) WHY DID HE APPOINT ASSISTANT PROFESSOR O'HARE TO THE POSITION OF ASSOCIATE DEAN OF FACULTIES FOR TEACHER EDUCATION BEFORE GIVING HER A CHANCE TO RECEIVE A VOTE OF CONFIDENCE FROM HER PEERS?

(c) WHY DID HE CHANGE HIS MIND AND DECIDE THAT HE WOULD ACCEPT TWO POSITIONS (DEAN AND CHAIRMAN) IF PROFESSOR LACEY WON THE ELECTION, BUT ONLY ONE POSITION IF PROFESSOR O'HARE WON?

3rd Conference with Provost Lief Regarding My Candidacy

On or about January 15, I had my third conference with Provost Lief concerning my candidacy for Dean of Teacher Education. That conference was evoked because the Education Department, on January 12, had chosen me as one of the nominees to stand for election to the Search Committee for a Dean.

My main question to the Provost was "Should I stand, and possibly be elected to a committee which is to search for a person to hold the position I am seeking?" The Provost answered by first saying "By the way, I am perfectly ready to consider you for the position." He continued by saying, however, that he thought that I should not stand for election to the Committee, and by reminding me that he had been in the embarassing position of being a member of the Search Committee which chose him for the position of Provost of Hunter College in the Bronx. He intimated further that he had had to resign from that Search Committee before their decision was made.

Questions:

(a) WHY DID PROVOST LIEF ADVISE ME NOT TO STAND FOR ELECTION TO THE SEARCH COMMITTEE WHILE HE FAILED TO ADVISE MY OPPONENT TO DO THE SAME?

(b) WHY WOULD HE APPLY A DOUBLE STANDARD BY ALLOWING MY OPPONENT, HIS POTENTIAL APPOINTEE, TO SIT IN JUDGMENT OF ME ON THE COMMITTEE WHILE I WAS NOT ACCORDED THE COMPARABLE OPPORTUNITY THROUGH THE ELECTION PROCESS?

4th
Conference
with
Provost
Regarding
My
Candidacy

On March 20, 1968, I requested my fourth conference with Provost Lief to discuss the status of my application for the position of Dean of Teacher Education at Lehman College. I sought that conference to determine the validity of a "rumor" around the Department which said, in effect, "that an acting Dean of Teacher Education, without the possibility of serving more than one year, was about to be appointed. With said appointment, to be made before election week (April 8-12), the Education Department would be disenfranchaised since voting on Dean's is not allowed.

Upon stating the substance of the rumor to the Provost, he became noticably angered. He stated that "no one can read my mind!" and "if I appoint Rita O'Hare some say I'm wrong and if I appoint Archie Lacey, some will say I am wrong."

It is significant that the Provost never disavowed the substance of the rumor. He ended a rather erratic and evasive discourse with the statement "By the way, that appointment is only for one year. I am going to give you a chance to straighten out that Department, and after a year I am going to bring someone in to knock heads together to straighten it out. I will be back in touch with you after I consult with the Search Committee.

Questions:

(a) HAD THE PROVOST ALREADY MADE UP HIS MIND TO IGNORE MY CANDIDACY AND APPOINT A NON-CANDIDATE TO THE POSITION AS THE RUMOR HAD PERSISTED?

(b) TO WHOM WAS THE PROVOST REFERRING WHEN HE SAID "BY THE WAY ..., I AM GOING TO GIVE YOU A CHANCE?

Announcement of Special Department Meeting

On Thursday April 4, the Education Department was circularized with a notice that the Department had been summoned to a Call meeting at 1:00 P.M. on Monday with the Dean of Faculties, Dr. James Kreuzer.

On receiving the notice, I went to the Central Education Office to try to ascertain the nature of the agenda of the Call meeting since none was given in the notice as is usually the case. No one in the central office, including one of Professor O'Hare's deputies admitted knowing the nature of the agenda.

The many sad events of April 4, and April 5 are too well remembered to recount them here, but significantly, Professor O'Hare failed to divulge anything regarding the nature of Monday's meeting over the long weekend from April 5 to April 8.

Conference with Professor O'Hare

When I arrived on campus on Monday April 8 at 9:00 A.M. I was given a message to see Professor O'Hare before the Department Meeting at 1:00 P.M. I went directly to Professor O'Hare's Office to be told by her that she had been appointed Associate Dean of Faculties for Teacher Education, and that Dean Kreuzer would come to the Department to make this announcement at 1:00 P.M.

I asked Professor O'Hare if she wanted to accept such an appointment without a vote of confidence, and why would the administration make such an announcement two days before the Board of Higher Education's stipulated elections for chairman of the Department?

Professor O'Hare answered the first question by saying she had no choice but to accept the appointments regardless of the vote. She answered the second question by saying she did not know.

Conference with Dean Kreuzer

About 10:45 on April 8, I was admitted, without a prior appointment, to enter and confer with Dean James Kreuzer.

I asked him, among others, the following questions:

Question: DOES THE APPOINTMENT OF PROFESSOR MARY RITA O'HARE WHO WAS NOT A CANDIDATE MEAN THAT I AM NO LONGER CONSIDERED A CANDIDATE FOR THE POSITION OF DEAN OF TEACHER EDUCATION AT LEHMAN COLLEGE?

Answer: By Dean Kreuzer - YES. THE SEARCH COMMITTEE WAS NOT ENTHUSED BY YOUR CANDIDACY.

Question: DOES THE ADMINISTRATION REALIZE THAT PROFESSOR O'HARE MIGHT NOT GET A VOTE OF CONFIDENCE FROM THE DEPARTMENT?

Answer: BY Dean YES. PROVOST LIEF HAS DECIDED TO CHANGE HIS MIND ABOUT THE POSITION. IF RITA (O'HARE) IS ELECTED, THE POSITION (DEAN AND CHAIRMAN) WILL BE ONE AND THE SAME. IF SOMEONE ELSE IS ELECTED, HE HAS DECIDED TO ACCEPT TWO POSITIONS. ONE FOR DEAN, ONE FOR CHAIRMAN.

Question: WHY WOULD THE ADMINISTRATION WANT TO COME BEFORE THE DEPARTMENT ONLY TWO DAYS BEFORE ELECTION. I THINK THIS MIGHT UNFAIRLY INFLUENCE THE VOTE BY INTIMIDATING SOME VOTERS IN THE DEPARTMENT?

Answer: by Dean NO. WE ARE ALLOWING THE VOTE TO PROCEED, BUT WE HOPE WE CAN GET THE DEPARTMENT TO SEE THAT IT IS BEST TO HAVE ONLY ONE POSITION, BUT IF THEY WANT TWO, THEY MAY HAVE THEM.

Question: SO YOU ARE SAYING THAT THE ADMINISTRATION WOULD NOT WANT MY SERVICES, THAT I COULD NOT WORK WITH YOU AS DEAN?

Answer: by Dean YES.

Question: DO YOU REALIZE WHAT YOU ARE SAYING TO ME? DO YOU REALIZE THAT WHAT YOU ARE DOING IS MAKING MY POSITION IN THE COLLEGE UNTENABLE? I had hoped that I could help the administration and the Department carry out its fine community oriented program. I came back here from Park Avenue to try to be deeply involved in building a very strong and good teacher education program. Do you realise that you are making my position untenable?

Answer by Dean: WELL YOU SHOULDN'T FEEL THAT YOUR SERVICES ARE NOT WANTED BECAUSE YOU CAN'T BE A DEAN. THE COMMITTEE WASN'T ENTHUSAISTIC ABOUT YOU NOR ANY OF THE OTHER THREE CANDIDATES.

Question: DO YOU KNOW HOW BADLY, HOW DEPRESSED YOU MAKE ME FEEL? WHY DON'T YOU AT LEAST WAIT UNTIL AFTER THE ELECTIONS TO MAKE YOUR ANNOUNCEMENT?

Answer by Dean: YES, ARCHIE, I KNOW HOW YOU FEEL, I HAD THIS TO HAPPEN TO ME ONCE. I WAS RECOMMENDED FOR A POSITION BY ________________, ONCE, AND SOMETHING LIKE THIS HAPPENED TO ME.

Summary Questions

1. HOW AND WHY DID THE PROVOST AND THE DEAN OF FACULTIES ARRIVE AT THE POSITION THAT I COULD NOT BE CONSIDERED FOR THE POSITION WITHOUT CONSULTING AND DISCUSSING THE ENTIRE PROCESS WITH THE SEARCH COMMITTEE.?

2. WHY WOULD THE ADMINISTRATION PREJUDGE MY QUALIFICATIONS FOR THE POSITION AT SUCH AN EARLY STAGE.? ONLY THREE OTHER CANDIDATES HAD BEEN INTERVIEWED, AND THEY NEVER REQUESTED LETTERS OF REFERENCE WHICH I COULD HAVE EASILY HAD SENT ON REQUEST.

3. DID THE PROVOST, OR THE DEAN, OR THE SEARCH COMMITTEE EXAMINE MY RECORD WHICH HAS BEEN ON FILE AND RAPIDLY GROWING DURING MY EIGHT YEARS AT HUNTER COLLEGE?

4. HAVE THE PROVOST, THE DEAN AND CERTAIN MEMBERS OF THE SEARCH COMMITTEE

   A. Discriminated against me
   B. Prejudiced my position at the College
   C. Used unfair, unethical and illegal procedures by interferring with a legally allowed election; and by precluding any possibility for me to develop and grow as a professional in the College ( the University and the Academic Community), and to have a chance to get experience as a possible college administrator?

5. HAVE PROVOST LIEF AND DEAN KREUZER, IN THESE INSTANCES, CONDUCTED THEMSELVES AS COMPETENT ADMINISTRATORS FOR A (LIBERAL) UNIT OF THE CITY UNIVERSITY OF NEW YORK? CAN THEY DEAL FAIRLY WITH THE PROBLEMS OF THE UNIVERSITY AS IT SEEKS TO HELP SOLVE SOCIETY'S SERIOUS PROBLEMS BY INCLUDING MORE PEOPLE FROM MINORITY GROUPS OF OUR CITY?

Pertinent By-laws

## ARTICLE IX—ORGANIZATION AND DUTIES OF FACULTY DEPARTMENTS

### §9.1 DEPARTMENT ORGANIZATION.

a. Each department, subject to the approval of the faculty, or faculty council where existent, and subject to the provisions of other sections of these bylaws, shall have control of the educational policies of the department through the vote of all of its members who are members of the faculty, and if the department so desires, of other members, except substitutes, who have been serving continuously for at least one year. It shall cooperate with related departments and with college agencies in general in the development of divisional or college-wide interests.

b. The executive officer of the department shall be the department chairman who shall be a person of professorial rank, elected by secret ballot for a term of three years except as provided below, by a majority vote of all the members of the instructional staff of the department who are members of the faculty and who are not on leave from the college. Proxy or mail voting shall not be permitted. Such election shall be subject to the subsequent approval of the president and the Board. The present system of staggered departmental elections shall be continued. The successors of department chairmen shall be elected during the first full week in May at the expiration of the respective terms of office to take office as of July first of the year in which they are elected and at three-year intervals thereafter. Vacancies shall be filled by election for the unexpired term.

In departments in which there is no one of professorial rank available or only one person of professorial rank available, an instructor in the department on tenure shall be deemed eligible for election to the position of department chairman.

* c. In any case where the president does not approve the election of a department chairman, he shall confer with the department and thereafter shall report to the Board any subsequent action by the department with respect thereto, together with his own recommendation of a chairman. The recommendation by the president to the Board for the designation of department chairmen should take place only after careful consideration by the president of the qualifications of those selected by the respective departments. The president should base his recommendation on the capacity of the individual selected to act effectively as the departmental administrator and spokesman and as a participant in the formation, development, and interpretation of college-wide interest and policy.

d. The faculty council of each college, except The City College, in which case it shall be the general faculty, shall have the option of determining whether the college shall operate under Plan No. One or Plan No. Two as outlined below and in Section 9.4.

**Plan No. One**—There shall be in each department a committee on appointments, elected at the same time as the regular election of the department chairman, consisting of five members where possible. These members shall include the department chairman as chairman, and any sub-chairmen, if members of the faculty; and shall not include at any one time more than one instructor or assistant to librarian.

our plan →

**Plan No. Two**—There shall be in each department a departmental committee on personnel and budget elected at the same time as the regular election of the department chairman consisting where possible, of five members, including the department chairman as chairman of the committee. Any sub-chairman, provided he is a member of the faculty, shall be one of the members of the committee. The committee shall not include at any one time more than one instructor or assistant to librarian. The committee shall be elected by a majority vote of the voting members of the department as described in Section 9.1, subdivision b, voting without distinction as to rank.

e. Each department may name such other committees as it chooses and shall have the fullest measure of autonomy consistent with the maintenance of general educational policy.

### §9.2 DUTIES OF CHAIRMAN OF DEPARTMENT.

a. The chairman shall be the executive officer of his department and shall carry out the department's policies as well as those of the faculty and the Board which are related to it. He shall be responsible for (1) the administrative work of the department such as departmental correspondence and records; (2) the assignment of courses to, and the arrangement of programs of individual teachers; and (3) the general supervision of the department. He shall have authority to initiate policy and action concerning departmental affairs subject to the powers delegated by these bylaws to the staff of the department in regard to educational policy, and to the appropriate departmental committees in the matter of promotions and appointments. He shall represent the department before the faculty council, the faculty and the Board. He shall preside at meetings of his department. He shall prepare the tentative departmental budget which shall be subject to approval by the department's committee on appointments or departmental committee on personnel and budget, after which he shall transmit it to the president together with his own recommendations. He shall also be charged with the responsibility for assuring careful observation and guidance of those members of the instructional staff of the department who are on temporary appointment. The chairman of the department, when recommending such temporary appointees for permanent appointment shall make full report to the president and the committee on faculty personnel and budget regarding the appointees' teacher qualifications and classroom work, the relationships of said appointees with their students and colleagues, and their professional and creative work.

b. In The City College where the work of a department is divided between two major centers of instruction located in different parts of the city, there shall be a sub-chairman at each such additional center; excepting that where only a small number of persons of a department are assigned to such additional center, the president shall have discretion in determining whether there shall be a sub-chairman. The sub-chairman shall be a member of the department whose principal instructional duties are allocated to the center concerned. He shall be elected by all the faculty members of the department assigned to that center. Such sub-chairman shall exercise the responsibilities of department chairman for purposes of action on matters concerning exclusively the work of the center concerned.

c. Each college library shall constitute an instructional department of which the librarian shall be chairman. This department shall include also associate librarians, assistant librarians, such assistants to librarians as have become members of the permanent staff, and may include the chairman of the faculty library committee if the department so desires.

d. In the Hunter College Elementary or High School there shall be a committee on personnel and budget, consisting of the principal of the school as chairman, the chairman of the department of education of Hunter College and three members of the instructional staff of such school elected for a term of three years by members of the permanent instructional staff of such school. The instructional staff of the elementary and high school shall consist of the principals, first assistants, assistant teachers, critic teachers, teachers and assistants to librarian. The said committee shall have in such school in so far as practicable the same functions as are assigned by these bylaws to the departmental committee on personnel and budget in the colleges.

### §9.3 APPOINTMENTS.

a. Recommendations for original appointments of any professorial rank shall be initiated (1) by the department, in the manner outlined for other original appointments, or (2) by the president, pursuant to his responsibility for conserving and enhancing the educational standards of the colleges and schools under his jurisdiction. The president may recommend that such appointee be designated as a department chairman. Such recommendations by the president for appointment and designation as department chairman may be made either at the time of election of department chairman or at such other time as the educational interests of the college may require. Before recommending such original appointment or designation, the president shall confer with members of the department and with the committee on faculty personnel and budget.

b. All other original appointments, all reappointments and appointments to the permanent instructional staff of a department shall be recommended to the committee on faculty personnel and budget by the chairman of the department, after consultation with the president, after a majority vote of the members of the department's committee on appointments or departmental committee on personnel and budget, save that a minority of any committee on appointments or departmental committee on personnel and budget shall have power to submit a minority recommendation to the committee on faculty personnel and budget.

c. In the Schools of General Studies and in the evening session of the Bernard M. Baruch School of Business and Public Administration, persons nominated for appointment or reappointment to full-time positions on an annual salary basis shall be nominated for such appointments and recommended for reappointment, tenure, promotion and salary by the department involved and the director of the School of General Studies or the director of the evening session of the Bernard M. Baruch School of Business and Public Administration. Such nominations and recommendations shall be submitted to the college personnel and budget committee and shall follow regular procedures set forth in these bylaws for full-time day session appointments.

### §9.4 PROMOTIONS.

a. Plan No. One. Promotions from the rank of instructor to that of assistant professor shall be recommended to the committee on faculty personnel and budget by the chairman of the department only after a majority affirmative vote of all the members of professorial rank in the department. Promotions to the rank of associate professor shall be so recommended only after a majority affirmative vote of all the associate professors and professors of the department. In departments where every professorial rank is not represented in the membership of the department, however, recommendations for promotion shall be initiated by the committee on appointments of the department, except in the case of promotion to a professorship.

Plan No. Two. All promotions in the instructional staff, except promotions to the rank of professor, shall be recommended to the committee on faculty personnel and budget by the chairman of the department only after a majority affirmative vote of the departmental committee on personnel and budget; provided, however, that no member of such committee shall vote on his own promotion.

A minority of any departmental committee on personnel and budget or any committee under Plan No. One of this section shall have the power to submit a minority recommendation to the faculty committee on personnel and budget.

Promotion to the rank of professor shall be recommended by the faculty committee on personnel and budget. The president, however, shall have the power to make an independent recommendation for promotion in any rank to the Board, after consultation with the appropriate departmental committee and with the faculty committee on personnel and budget. In all instances no final action of departmental committees with regard to promotions shall be taken without consultation with the president.

b. Appointment and promotion of registrar or science assistant personnel shall conform with the spirit of these bylaws including the role of the president for initiating recommendations for appointments and promotions.

**§9.5 TIE VOTES.** A tie vote in a case affecting an appointment, a reappointment or a promotion shall be considered as a failure of the motion to prevail. Tie votes in the election of a department chairman or representation of department committees on personnel and budget or committees on appointments on the faculty council, shall be resolved by action of the president.

Our tie vote was created by the administrative interference - All

**§9.6 NEW COLLEGES.** The provisions of this article in so far as they specify certain organizational duties and responsibilities of the instructional staff, shall not apply to newly-created colleges until five years after their establishment. However, in so far as practicable, the spirit of this bylaw shall be observed in the organization and operation of the departments of such college.

A minority of any departmental committee on personnel and budget or any committee under Plan No. One of this section shall have the power to submit a minority recommendation to the faculty committee on personnel and budget.

Promotion to the rank of professor shall be recommended by the faculty committee on personnel and budget. The president, however, shall have the power to make an independent recommendation for promotion in any rank to the Board, after consultation with the appropriate departmental committee and with the faculty committee on personnel and budget. In all instances no final action of departmental committees with regard to promotions shall be taken without consultation with the president.

b. Appointment and promotion of registrar or science assistant personnel shall conform with the spirit of these bylaws including the role of the president for initiating recommendations for appointments and promotions.

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**§9.6 NEW COLLEGES.** The provisions of this article in so far as they specify certain organizational duties and responsibilities of the instructional staff, shall not apply to newly-created colleges until five years after their establishment. However, in so far as practicable, the spirit of this bylaw shall be observed in the organization and operation of the departments of such college.

## ARTICLE X—THE UNIVERSITY STAFF

**§10.1 THE UNIVERSITY STAFF.** There is hereby established as an educational unit under the Board of Higher Education that portion of The City University of New York which is administered centrally by the Chancellor, either directly or through a dean directly responsible to him, and which is not part of any of the existing senior or community colleges under the jurisdiction of the Board of Higher Education. Such educational unit shall be known as the "University Staff" and persons holding positions on the University Staff shall, for the purposes of public reference, be deemed to hold positions in The City University of New York.

**§10.2 DIVISION OF TEACHER EDUCATION.** There shall be an educational unit under the Board of Higher Education known as the division of teacher education. The division shall consist of a dean, and such other instructional and administrative personnel as may be appointed to the central office of the dean of teacher education.

**§10.3 RESPONSIBILITIES OF THE DIVISION OF TEACHER EDUCATION.** The division of teacher education shall exercise the responsibilities hereinafter enumerated. It shall under the supervision of the Chancellor:

a. Coordinate and exercise advisory supervision of the programs of teacher education, both graduate and undergraduate, offered in the municipal colleges;

b. Aid in the development of special facilities for teacher education;

c. Administer the central office of coordination, of research and evaluation, and such other services as may be established as a unified central facility;

d. Prepare the tentative annual budget for teacher education;

e. Discharge such other duties as may be assigned to it by resolution of the Board or by the Chancellor.

It may establish in one or more centers such auxiliary and instructional services as may be necessary for the improvement of teacher education.

**§10.4 DEAN OF TEACHER EDUCATION.** The dean of teacher education shall be advisor to the Chancellor in all matters pertaining to teacher education, and his executive agent in administering the affairs of the division of teacher education. On all matters of basic policy and procedure affecting the development of programs in teacher education conducted by the colleges, the dean shall confer regularly with the committee on coordination of teacher education. The committee so designated shall consist of the dean who shall be chairman of the committee, a member of the staff of the division designated by the Chancellor and one member

PROFESSIONAL VITA

Archie L. Lacey - Associate Professor of Education
Hunter College of the City University of New York

Born January 21, 1923 at Boothton, Alabama (13th of 16 children). Graduated valedictorian from local Junior High School in 1937, and County Training School in 1940.

Veteran of World War II - Enlisted Reserves in U.S. Army from Oct. 1942 - Mar. 1943. Active Duty Mar. 1943 to Jan. 1946. Service in European Theater (18 months), Pacific Theater (5 months).

## Higher Education

| Institutions | Dates | Degree | Fields |
|---|---|---|---|
| Alabama State College<br>Montgomery, Alabama | 1940-43 | | Science - Math. |
| U.S. Army Engineering School, Fort Belvoir, Va. | May - Sept | Certificate | Water Engineering |
| Alabama State College<br>Montgomery, Alabama | 1946-47 | B.S. | Science (Chemistry)<br>Mathematics |
| Howard University<br>Washington, D.C. | 1948-49 | | Chemistry |
| Northwestern University<br>Evanston, Illinois | Summer 1951<br>9 weeks | | Science Education |
| " " | 1952-53 | M.A. | Science Education |
| " " | 1953-55 | Ph.D. | (Research and Dissertation on "A Study of Programs for the Preparation of Science Teachers at Selected Colleges and Universities" |
| City University of New York | Fall 1961<br>10 weeks Seminar | | Programmed Instruction |
| New York University Extension, Teaneck, N.J. | Summer 1963<br>20 hour Seminar on Leadership Training | | Educational Sociology |

| Institutions | Dates | Fields |
|---|---|---|
| American University<br>Washington, D.C. | Summer 1965<br>5 week National<br>Science Foundation<br>Institute, for<br>College Teachers<br>of Science, Math.,<br>and Engineering | History and<br>Philosophy of<br>Science and<br>Mathematics |
| Ball State University<br>Muncie, Indiana | Spring 1966<br>35 hour N.D.E.A.<br>Institute on<br>Teaching the<br>Disadvantaged | Educational<br>Curriculum and<br>Supervision and<br>Sensitivity<br>Training. |
| University of Southern<br>California<br>Los Angeles, Calif. | Spring 1967<br>40 hour N.D.E.A.<br>Workshop on<br>Special Media<br>and Technology | Educational<br>Technology |

## Professional Experience

| Teaching | Dates | Department |
|---|---|---|
| **U.S. Army** | | |
| Taught Army Engineers<br>Techniques of Water<br>Purification | Sept. 1943-<br>July 1944 | Engineers<br>Water Purification |
| **Elementary** | | |
| Taught young children<br>8-12 of Teaneck, N.J.<br>on a volunteer basis<br>on Saturday mornings. | Spring 1964<br>Fall 1965<br>Spring 1966 | Science for children |
| **Secondary** | | |
| Instructor and Chairman<br>of Science and Math.<br>at East Street High Sch.<br>Opelika, Ala. | 1947-48 | Science and Mathematics |
| **College** | | |
| Alabama State Branch<br>Junior College<br>Mobile and Birmingham, Ala. | 1949-52 | Natural Sciences |
| Alabama State College<br>Montgomery, Ala. | Summer 1954 | Natural Sciences |

| Teaching | Dates | Department |
|---|---|---|
| Northwestern University<br>Evanston, Illinois | Summer 1955 | Science Education |
| Alabama State College<br>Montgomery, Alabama | 1955-57 | Natural Sciences |
| Grambling College<br>Grambling, Louisiana | 1957-60<br>Summer 1960-61-62 | Natural Sciences |
| Hunter College<br>The City Uni. of N.Y. | 1960 to present | Science Education |
| | 1962 to present | Lecturer in Science Education in School of General Studies Advisor since Spring 1965. |

| Non Teaching | Dates | |
|---|---|---|
| East Street High School<br>Opelika, Alabama | 1947-48 | Chairman of Science Dept. Football and basketball coach.<br>Also Directed Summer Recreational Program |
| Alabama State Branch<br>Junior College | 1949-52 | Coordinator of Sciences and Audio Visual Aids |
| Northwestern University | 1952-55 | Laboratory Preparator and General Assistant in Biological Sciences.<br>Also Assistant to the University Proctor |
| Alabama State College | 1955-57 | 1. Liaison to Education Dept. from Science Department.<br>2. Directed thesis work of candidates for Master degree in Science Education<br>3. Directed Workshops in Science Education for the State Department: Summers 1956 and 1957. |

| Non Teaching | Dates | |
|---|---|---|
| Grambling College | 1957-60 | 1. Coordinator of Physical Sciences. |
| | | 2. Liaison to Education Department from Science Department. |
| | | 3. Prepared proposals for Grants and Directed National Science Foundation Summer Institutes in Science for Secondary School Teachers (Summers 1960, 1961, 1962) Grants totaling $151,000. |
| | | 4. Campus Representative for Woodrow Wilson National Scholarship Foundation. |
| Hunter College | 1960-present | 1. Supervisor of Student Teachers in Science. |
| | | 2. Educational Advisor for the School of General Studies at Park Avenue since Fall 1965. |
| | Summer & Fall 1964 | Acting Coordinator of Sciences for Teacher Education Program. |
| | Spring 1965 to present | College Science Consultant to New York City Board of Education for College Discovery and Development Program. |
| | Summer 1966 and 1967 | Co-director N.D.E.A. Institutes in Science for Disadvantaged Youth. |

## Major Consultative Services in Science and Science Education

| | |
|---|---|
| Alabama State Department of Education | 1955-57 |
| Southern Regional Council (Field Agent) | 1956-57 |
| Phelps Stokes Fund of New York | 1955-57 |
| Louisiana Education Association | 1957-60 |
| New York University School of Dentistry | Spring 1961 |
| Board of Education of the City of New York College Discovery and Development Program | 1965-Present |
| Psychological Corporation of New York | 1965 |
| Teaneck New Jersey Board of Education | 1965-66 |
| Columbia University Double Discovery Program of College Discovery | Summers 1965 and 1966 |
| Fordham University - N.D.E.A. Inter-Institutional Curriculum Development Program | 1967 |
| Grambling College Curriculum Improvement Program | 1967-68 |
| Hunter College High School | 1968 |

## Publications

### Books

with Katherine B. Hoffman
*Chemistry of Life*. New York: Scholastic Book Services. 1964 (Paperback) McGraw-Hill Book Company, 1964 (clothbound)

*Guide to Science Teaching in Secondary Schools*. Belmont, California: Wadsworth Publishing Co., Inc., 1966 with Virginia Rowley as contributing author.

### Major Articles

"A Study of Programs for the Preparation of Science Teachers for Secondary Schools at Selected Colleges and Universities" *Beta Kappa Chi Bulletin* 14: 16-22 Jan. 1956 (Summary of Ph.D. Dissertation)

"Minimum Expectations of the Prospective Science Teachers" *Metropolitan Detroit Science Review* 19: 22-30 Sept. 1958

"Continental Classroom and the Small Science Department". *Science Education* 43: 294-98, Dec. 1959.

With a Committee of the National Science Teachers Association
"Planning for Excellence in High School Science" Washington, D.C.
National Science Teachers Association. 1961.

"A Commentary on the Objectives of Science and Education in the Spatomanuclear Age" *Transactions of the National Institute of Science* 14: 31-32 April 1961

"Problems in Science Education at Predominantly Negro Colleges" *Transactions of the National Institute of Science* 15: 4-7 April 1962

"The Hunter College Project in Elementary School Science" *Journal of Teacher Education*. 13: No. 2, 126-27, June 1962

with Harold Tannebaum
"Mass Inservice Education for Elementary School Teachers" *Educational Leadership*. 25: 1 October 1967, pg. 51-53

*At Press*

1. A series of Seven Articles:

   "Chautauqua"

   "Conant, James Bryant"

   "Lyceum Movement"

   "Peabody, Elizabeth"

   "Preparatory School"

   "United States Office of Education"

   "University"

   to be published in the 1968 edition of *Encyclopedia International* by Groliers, Incorporated.

2. "Scientific Communication: Implications for Science Education"

3. "The Weekend Conference of 1967: The Ending of one and the Beginning of a New Era at Hunter College" *Teacher Education News and Notes*, Spring 1968

4. "How College Science Consultants Contribute to Curriculum Change in the College Discovery and Development Program." *The Directors Final Report* for 1967, Spring 1968

5. Two book reviews to be published in *The American Biology Teacher* Spring 1968

   *Penguin Science Survey B - 1967* Allison, Anthony, Editor

   *Introducing Biology* by James F. Riley

## In Preparation

First revision of *Guide To Science Teaching in Secondary Schools*.

"Negro Higher Education at the Crossroads: Football Goal Posts and Basketball Goals Notwithstanding".

"Teaching Elementary School Science With Toys".

## Major Speeches, Delivered Papers, and Community Services

Delivered Invited Paper on "A Proposed Study of Selected Programs for the Preparation of Science Teachers" at Annual Meeting of the National Association for Research In Science Teaching at Chicago on Mar. 17, 1954.

Delivered Invited Paper on "Special Guidance For High School Science Students" at Annual Meeting of National Institute of Science and Beta Kappa Chi Scientific Society at Tuskegee Institute, Tuskegee, Alabama in April 1956.

Recorder for Section on "Activities for Exceptional Students in Science" at Annual Meeting of the National Science Teachers Association at Denver, Colorado, Mar. 1958.

Coordinator and Chairman for Section on "Articulation Between High School and College Science" at Annual Meeting of National Science Teachers Association at Atlantic City, New Jersey, April 1959.

Chairman of Section on "Physical Science" at Annual Meeting of National Science Teachers Association at Kansas City, Missouri, April 1960.

Delivered Invited Paper on "The Hunter College A.A.A.S. Project in Science Education at the 128th Annual Convention of the American Association for the Advancement of Science at Denver, Colorado, December 28, 1961. Abstract of paper in volume 13 of *Journal of Teacher Education*, 1962

Consultant to American Toy Institute at Annual Convention of National Science Teachers Association at Philadelphia, Pennsylvania, Mar. 1963.

Panel Discussant on "Individuality and Common Purpose: A Philosophy of Science" Main address delivered by Dr. Robert Cohen, Chairman of Department of Physics, Boston University) at the Annual Meeting of the National Science Teachers Association at Chicago, Illinois, Mar. 21, 1964.

Panel Discussant on "Integrating the Teaneck Schools" a Thirty Minute Program prepared and Narrated by Edwin Ross, Program Chairman of Radio Station WBAI, New York, N.Y. Program was broadcast in January 1965. (Tape Recording available)

Presentation of "A Tribute to Abraham Ruskin - Father of N.S.T.A.'S International Program" for the National Science Teachers Association at Annual Meeting, Denver, Colorado Mar. 31, 1965. Written tribute is framed and one copy hangs in the National Office of the Association and one at Hunter College. Abstract of Tribute in Volume 32 of The Science Teacher, 1965. Also Invited paper on "Improving Instruction In College Science Courses" April 1, 1965

Panel Discussant on "Policies for Science Education in the U.S.A." at the Annual Convention of the National Science Teachers Association at the New York Hilton, April 4, 1966.

Delivered Invited paper on "Teaching Science To Disadvantaged Youth" at the Eastern Regional Convention of the National Association of Biology Teachers at the Americana Hotel, Oct. 14, 1966.

Delivered invited paper on "Innovation in Science for Elementary Teachers" at the 133rd Annual Convention of the American Association for the Advancement of Science at Washington, D.C. Dec. 28, 1966. Abstract in Educational Leadership Volume 25, 1967

Delivered Invited paper on "Scientific Communication: Implications for Science Education"at Eastern Regional Meeting of the Association for the Education of Science Teachers at Columbia University, Oct. 27, 1967

Invited Paper on "Improving Evaluation in Secondary School Science" at Annual Convention of the National Science Teachers Association at Washington, D.C., Mar. 31, 1968.

Also numerous other speeches and presentations to P.T.A.'s, student clubs and civic and community organizations in the metropolitan area.

Major Community Services include:

1. Service to the College Community

    A. Departmental

        Annual weekend Conference Committee, Member since 1960. Program Chairman for 1964, 65, 66. Overall chairman 1967

        Curriculum Committee since 1962

        Committee to formulate 6 year program 1963

        Conducted a faculty Workshop in Elementary School Science, Spring 1962

        Consultant and teacher in A.A.A.S. Experimental Science Program for Elementary School Teachers, Fall 1961. Results reported at 128th Annual Convention of the American Association for the Advancement of Science.

Elected Charter Member of Department Personnel Policies and Program Advisement Committee 1965-66.

Co-chairman of Arrangements for Project T.R.U.E., Planning Conference at Greystone Mansion, Feb. 1965

Elected representative to the Four College Teacher Education Conference 1963-65.

Elected as one of four faculty representatives to the Student-Faculty Forum of the Department 1966.

Science Resource person at Department's guidance conference, Spring 1964&65.

Appointed to Department Curriculum Committee and Graduate Liaison Committee, Fall 1967 (Lehman) Elected to same Feb. 2, 1968.

Elected member of Department Personnel and Budget Committee Fall 1967 (Lehman)

B. College Wide

Member of the Board of Directors of the African Students Scholarship Assistance Committee - 1960; Treasurer since 1962

Faculty Representative on the Judicary Board of Hunter College in the Bronx 1961-62 and 1962-63

Faculty Marshall at Commencement Exercises. 1963, 1964, 1966, 1967 and January 1968.

Faculty Counselor at Freshman Camp at Blairstown, N.J. Y.M.C.A., Camp, Sept. 16 and 17, 1963.

Secretary of American Association For University Professors 1964-65, Treasurer 1965-1966.

President Elect for Hunter in the Bronx chapter of AAUP 1967-68.

Faculty Host at Receptions for Parents of Freshman at Hunter College in the Bronx, Sept. 1961, 1963, 1963.

Supervised the organization of the "Abraham Raskin Science Book Collection" and helped organize the Abraham Raskin Memorial Scholarship and Library Fund, 1964 and 1965, Co-chairman of Fund Committee 1965.

Campus Chairman of Four City College Teacher Education Conference held on the Bronx Campus, Nov. 6, 1964

Represented Hunter College Administration at National Aero-Space Conference at Washington, D.C. Sept. 9-12, 1964

Elected member of Hunter College Faculty Council Committee on Standards in Teaching, Dec. 1966.

Appointed by Provost as Divisional Faculty Representative on the Name Committee for Lehman College, Sept. 1967.

Elected member at-large to Faculty Council of Hunter College, Spring 1967

Elected member of the Hunter College in the Bronx ad hoc committee on the Master Plan for Lehman College Fall 1967 Also elected chairman of sub-committee for production of document of Master Plan.

Elected one of five members of Faculty Executive Committee of Hunter College in the Bronx (Lehman College), Fall 1967

Elected Chairman of ad hoc Science Coordinating Committee for Lehman College, Fall 1967

C. University Wide

On University Planning Committee for Four College Teacher Education Conference at the City College 1963, Hunter College in the Bronx 1964 (campus chairman), and Hunter College, Park Avenue, 1965. Resource person on curriculum in 1963, and section chairman in 1965.

Section leader at City University sponsored College Discovery and Development Conferences at Alden House, Harriman, N.Y., Jan. 28-31, 1966, and at Lake Minnewaska, N.Y. Nov. 18-20, 1966 Wrote final reports for College Science Consultants in 1966 and 1967.

2. Service To The Larger Community

Served as Special Judge to help select a student representative to the Science Conference held in England during Summer 1963

Conducted a National Survey on "Unique Problems in Science Education at Predominantly Negro Colleges", Fall 1960

Appointed Assistant Examiner for Science with the Board of Examiners of New York City, Fall 1960.

Co-chairman of the Bergen County Committee for the "March to Washington". Organized transportation for 10 buses from six communities in Bergen County - July and August 1963.

Member of Citizens Advisory Committee for "Operation Community Talent", a Federally Supported Title XI program for Teaneck and surrounding communities in Bergen County. Spring 1966.

Elected member of Board of Directors of Scholarship, Education and Defense Fund for Racial Equality, Spring 1966. Member of the Eleanor Roosevelt Scholarship Committee since Fall 1962

Member of the Board of Directors of Fair Housing Committee of Teaneck, New Jersey, and Bergen County 1963 to present

Selected by National Science Foundation to serve on panel to evaluate proposals for 1965 summer institutes in science, Washington, D.C. August 1964

Conducted, on a volunteer basis, workshops on "Science for Children" for young people (6-12) in Teaneck, N.J. on Saturday mornings, Fall 1963, Spring 1964, Fall 1965 and Spring 1967.

Selected by the U.S. Office of Education to serve on Panel to formulate National program for Special Media Institutes. Washington, D.C. May 1967.

Member of the Board of Directors of Teaneck Citizens for Public Schools 1963 to present. Secretary 1964-65 Vice President 1965-66, President 1966-67, Presently Chairman of Program Committee.

Member of the Board of Trustees of Bergen County Community College, for four year term to begin Jan. 1, 1968 and Expire Jan 1, 1972.

Member of the Board of Trustees of Central Unitarian Church, Paramus, New Jersey for three years, 1967-1970.

Membership in Professional Organizations with Major Committees and Offices held.

American Association for the Advancement of Science 1954 (Elected Fellow 1959)

American Association of University Professors, Offices held at Hunter College - Secretary 1963-64, Treasurer 1964-66, President-Elect 1967-68.

Association for the Education of Science Teachers

National Association for Research in Science Teaching (Elected in 1959)

National Science Teaching Association (Life Member) Offices held: Director Region IV - Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, South Carolina and Puerto Rico - 1958-60; Ad hoc committee on the Utilization of the American Museum of Atomic Energy at Oak Ridge, Tenn. 1955-57; Standing Committee on Professional Activities for Teachers 1959-60; Policies Committee 1960-61; Elections Committee 1961; Vistas of Science Committee 1960-64; Committee to select a leading science student from New York and New Jersey for participation in the 1962 International Youth Science Fortnight and European Science Study Tour, Spring 1962.

New York Academy of Science (Elected 1958)

National Society for the Study of Education

Alphá Phi Alpha Social Fraternity (President of College Chapter during Senior Year)

Beta Kappa Chi Honorary Scientific Society (Regional Vice President 1956-58)

Phi Delta Kappa Educational Fraternity (Elected Spring 1953)

Masons

Summary of Major Leadership Roles

1. High School

President of Junior Class

President of New Farmers of America during Junior and Senior Years.

2. College

Treasurer of Senior Class 1946-47

Business Manager of Campus Veterans Organization 1946-47

Business Manager of Campus Society of Musicians 1942-43, 1946-47

President of Tau Sigma Rho Science Club 1946-47

President of Campus Chapter of Alpha Phi Alpha Fraternity 1946-47

3. Professional and Army

Section Leader of Water Purification Specialists in Europe and Pacific 1944 and 1945

Director of Summer Recreational Program for Negro Youths of Opelika, Alabama Summers of 1947 and 1948.

Head Coach of football and basketball at East Street High School, Opelika, Alabama 1947-1948

Coordinator of Natural Sciences and Audio-visual Aids at the Mobile Branch of Alabama State College 1949-52

Assistant to the University Proctor, Northwestern University 1952-55

Thesis Advisor for Masters Candidates for degrees in Science Education, Alabama State College, 1955-57

Directed Workshop in Science Education for the Alabama State Department of Education at Alabama State College Summers of 1956 and 1957.

Science Consultant to the Louisiana Education Association 1957-60.

Directed Workshop in Science for Louisiana State Department of Education at Grambling College, Summer 1958.

Directed Summer Institutes in Science under sponsorship of National Science Foundation at Grambling College, 1960, 1961 1962.

Served as Acting Coordinator of Sciences for the Teacher Education Program at Hunter College, Summer 1964 and Fall 1964.

Served as Co-Director of Summer Institutes in Science for Disadvantaged Youth under the sponsorship of the National Defense Education Act at Hunter College, 1966 and 1967.

## Professional and Academic Honors

Graduated Valedictorian from Junior and Senior High School.

Elected to Beta Kappa Chi Honorary Scientific Society 1947.

Graduate Student Research Project selected by National Association for Research in Science Teaching as one of the four best student projects in American Universities. Paper describing project presented at Annual Meeting at Chicago in 1954.

Elected to Phi Delta Kappa Honorary Fraternity for Education at Northwestern University 1953.

Chosen Alumnus of the Year, Alabama State College 1955.

Elected to membership in National Association Research in Science Teaching 1959.

Elected "Fellow" in American Association for the Advancement of Science 1959.

Awarded Bronze Medallion by National Science Teachers Association at Los Angeles, California for Distinguished Service to the Association July 1960.

Elected to the New York Academy of Science, 1963.

Listed in American Men of Science since 1961.

Listed in Leaders in American Science since 1961.

Listed Who's Who in American Education 1966.

Listed in Marquis' Who's Who in the East for 1963.

HUNTER COLLEGE IN THE BRONX
OF THE
CITY UNIVERSITY OF NEW YORK
Bedford Park Boulevard West
New York 68, N. Y.

Department of Sociology

May 28, 1968

Provost Leonard Lief
Herbert H.Lehman College

Dear Provost Lief,

The following have been elected to the Executive Committee of the Faculty of Herbert H.Lehman College for a three year term of office beginning July 1, 1968:

Professor Jack Begelman
Professor William Bosworth
Professor Robert Johnson
Professor Archie Lacey
Professor Arthur Sprague

Sincerely yours,

/s/ Murray Hausknecht
Chairman
Executive Committee of the Faculty

cc: Dean James Kreuzer
Professor Jack Begelman
Professor William Bosworth
Professor Robert Johnson
Professor Archie Lacey
Professor Arthur Sprague
College Post Office

MH:df

I thought you should have a copy of this

May 27, 1968

Dear Colleague:

It gives us great pleasure to inform you that you have been elected as a member-at-large of the Lehman College Faculty Council, 1968-1971.

Sincerely yours,

The Committee on Committees
Reuben Baumgarten
Hannah Bergman
Joseph DeVito
Beryl Herdt
Virginia Staudt Sexton, Chairman

Thought you should have a copy.

SEUFRE

LACY, FRED VS. LOUISIANA 1966
(DEMONSTRATION RESULTING IN ARREST for FOUR or FIVE MISDEMEANORS)

Box 38
Folder 15

State Historical Society Of Wisconsin

Please Retain Original Order

THE FOLLOWING PAGES ARE THE BEST
AVAILABLE.

#1248B

# STATE OF LOUISIANA, PARISH OF ST. HELENA

## TWENTY-FIRST JUDICIAL DISTRICT COURT

Into the Honorable the Twenty First Judicial District Court of Louisiana, setting in and for the Parish of St. Helena, comes now into Open Court the undersigned District Attorney of the Twenty-First Judicial District Court of the State of Louisiana, and with the leave of the Court first obtained, in the name and by the authority of the said State, informs the said Honorable Court that one

Fred Lacey

late of the Parish of St. Helena, on the 2nd day of February in the year of Our Lord, One Thousand, Nine Hundred and Sixty-six (1966), with force and arms, in the Parish of St. Helena and State of Louisiana, aforesaid, and within the jurisdiction of the Twenty-First Judicial District Court of Louisiana, for the Parish of St. Helena, wilfully and unlawfully,

did violate Article 103 of the Louisiana Criminal Code by disturbing the peace by using unnecessary loud, offensive or insulting language at the St. Helena Parish School Board office building in Greensburg,

[illegible]

alarm the public in violation of Louisiana Revised Statutes 14:103 of the Louisiana Criminal Code.

contrary to the form of the statutes of the State of Louisiana, in such cases made and provided and against the peace and dignity of same.

District Attorney for the 21st Judicial District of Louisiana

A true copy April 18th, 1966

Shirley F. Cuccia

Dep. Clerk of Court St. Helena Paris La.

#1244A

# STATE OF LOUISIANA, PARISH OF ST. HELENA
## TWENTY-FIRST JUDICIAL DISTRICT COURT

To the Honorable the Twenty-First Judicial District Court of Louisiana, sitting in and for the Parish of St. Helena, comes now into Open Court the undersigned District Attorney of the Twenty-First Judicial District Court of the State of Louisiana, and with the leave of the Court first obtained, in the name and by the authority of the said State, informs the said Honorable Court that one

Fre. Lacey

late of the Parish of St. Helena, on the 8th day of February in the year of Our Lord One Thousand, Nine Hundred and Sixty-six (1966), with force and arms, in the Parish of St. Helena and State of Louisiana, aforesaid, and within the jurisdiction of the Twenty-First Judicial District Court of Louisiana, for the Parish of St. Helena, wilfully and unlawfully,

did violate Article 97 of the Louisiana Criminal Code by intentionally obstruct the movement of a school bus on Louisiana Highway #1042, thus rendering movement thereon more difficult.

contrary to the form of the statutes of the State of Louisiana, in such cases made and provided and against the peace and dignity of same.

District Attorney for the Twenty-First Judicial District of Louisiana

A true copy April 18th 1966
Shirley F. Cuccia
Dep. Clerk of Court St. Helena Parish, La.

1250B

# STATE OF LOUISIANA, PARISH OF ST. HELENA
## TWENTY-FIRST JUDICIAL DISTRICT COURT

Into the Honorable the Twenty-First Judicial District Court of Louisiana, setting in and for the Parish of St. Helena, comes now into Open Court the undersigned District Attorney of the Twenty-First Judicial District Court of the State of Louisiana, and with the leave of the Court first obtained, in the name and by the authority of the said State, informs the said Honorable Court that one

Fred Lacey, over the age of 17 years,

late of the Parish of St. Helena, on the 2nd day of February in the year of Our Lord, One Thousand, Nine Hundred and Sixty-six (1966), with force and arms, in the Parish of St. Helena and State of Louisiana, aforesaid, and within the jurisdiction of the Twenty-First Judicial District Court of Louisiana, for the Parish of St. Helena, wilfully and unlawfully,

did contribute to the delinquency of juveniles by intentionally, enticing, aiding or permitting Georgia Rankins and others, 16 years or under 17 years, to habitually trespass where it is recognized

Louisiana Criminal Code and to violate laws of the State of Louisiana and Town of Greensburg.

Contrary to the form of the statutes of the State of Louisiana, in such cases made and provided and against the peace and dignity of same.

District Attorney for the 21st Judicial District of Louisiana

A true copy April 18th 19[illegible]

Shirley F. Cucca

Dep. Clerk of Court St. Helena Parish, La.

#1252B

# STATE OF LOUISIANA, PARISH OF ST. HELENA
## TWENTY FIRST JUDICIAL DISTRICT COURT

---

Unto the Honorable the Twenty-First Judicial District Court of Louisiana, sitting in and for the Parish of St. Helena, comes now into Open Court the undersigned District Attorney of the Twenty-First Judicial District Court of the State of Louisiana, and with the leave of the Court first obtained, in the name and by the authority of the said State, informs the Honorable Court that

Fred Lacey

late of the Parish of St. Helena, on the 2nd day of February in the year of Our Lord, One Thousand, Nine Hundred and Sixty-six (1966), with force and arms, in the Parish of St. Helena and State of Louisiana, aforesaid, and within the jurisdiction of the Twenty-First Judicial District Court of Louisiana, for the Parish of St. Helena, wilfully and unlawfully,

did violate Article 63.3 of the Louisiana Criminal Code by Trespassing and entering St. Helena Parish School Board Office Building in Greensburg, Louisiana after having been forbidden to do so.

contrary to the form of the statutes of the State of Louisiana in such cases made and provided and against the peace and dignity of same.

District Attorney for the Twenty-First Judicial District of Louisiana

A true copy April 18th 1966

Shirley F. Cucara

Dep. Clerk of Court St. Helena Parish, La.

#1253A

# STATE OF LOUISIANA, PARISH OF ST. HELENA

## TWENTY FIRST JUDICIAL DISTRICT COURT

Into the Honorable the Twenty First Judicial District Court of Louisiana, setting in and for the Parish of St. Helena, comes now into Open Court the undersigned District Attorney of the Twenty First Judicial District Court of the State of Louisiana, and with the leave of the Court first obtained, in the name and by the authority of the [illegible] Honor [illegible]

[illegible]

late of the Parish of St. Helena, on the 2nd day of February in the year of our Lord, One Thousand, Nine Hundred and Sixty-six (1966), with force and arms, [illegible] St. Helena and State of Louisiana, aforesaid, and within the jurisdiction of the Twenty-First Judicial District Court of Louisiana, for the Parish of St. Helena, wilfully and unlawfully,

did violate Article 63.4 of the Louisiana Criminal Code by enticing, soliciting, urging and encouraging and procuring other persons to go upon and remain in St. Helena Parish School Board Office Building

contrary to the form of the statutes of the State of Louisiana, in such cases made and provided and against the peace and dignity of same.

District Attorney for [illegible] Judicial District of Louisiana

A true copy April 18th 1966

Shirley F. Cucora

Dep. Clerk of Court St. Helena Parish, La.

| | |
|---|---|
| STATE OF LOUISIANA | NUMBER: 1267-B |
| VS. | 21st JUDICIAL DISTRICT COURT |
| | PARISH OF ST. HELENA |
| FRED LACY | STATE OF LOUISIANA |

## APPLICATION FOR BILL OF PARTICULARS

**NOW INTO COURT** through undersigned Counsel comes **FRED LACY**, accused herein, reserving his right to file special pleadings herein, plead that he is unable to properly prepare his defense until he is furnished with the Bill of Particulars upon the following:

1. What particular acts of defendant violated Article 92 of the Louisiana Criminal Code?
2. What particular acts of the accused amounted "enticing, exhorting and encouraging juvenile students"..."to absent themselves from school"?
3. What objective standard was used to gauge the above acts allegedly performed by the accused in the foregoing?

**WHEREFORE YOUR DEFENDANT PRAYS**, that the State of Louisiana through the District Attorney be ordered by the Court to furnish the said Bill of Particulars above requested and that service of same be made upon your defendant through undersigned counsel.

BY ATTORNEY:

MURPHY W. BELL

OF COUNSEL:

CARL RACHLIN, ESQ.
150 Nassau St., New York, N. Y.

**COLLINS, DOUGLAS & ELIE**
2211 Dryades St., New Orleans, La.

## CERTIFICATE

I certify that a copy of the foregoing Application has this day been served upon the District Attorney for the 21st Judicial District Court by mailing a copy of the same to his address in Amite, La.

Baton Rouge, Louisiana, May 9, 1966.

MURPHY W. BELL

| | |
|---|---|
| STATE OF LOUISIANA | NUMBER: 1249-A |
| VS. | 21ST JUDICIAL DISTRICT COURT |
| | PARISH OF ST. HELENA |
| FRED LACY | STATE OF LOUISIANA |

## APPLICATION FOR BILL OF PARTICULARS

NOW INTO COURT through undersigned counsel comes FRED LACY, reserving his right to file other special pleadings herein, plead that he is unable to properly prepare his defense herein until he is furnished with a Bill of Particulars upon the following:

1. What particular school bus on Louisiana Highway No. 1042 is he accused of rendering movement thereon more difficult?
2. Is the State contending that he intentionally placed an object on La. Highway 1042 for the express purpose of rendering the movement of the aforesaid school bus more difficult?
3. Is the State contending that FRED LACY intentionally or criminally negligent placed an object on said roadway?
4. What is the object and how did it render movement of the bus more difficult?
5. What is the name of the driver of the said bus in question?

WHEREFORE MOVER PRAYS, that the State of Louisiana through the District Attorney be ordered by the Court to furnish the said Bill of Particulars above requested, and that service of same be made upon your defendant through undersigned counsel.

BY ATTORNEY:

MURPHY W. BELL
971 South 13th Street
Baton Rouge, Louisiana

OF COUNSEL:

CARL RACHLIN, ESQ.
150 Nassau St.
New York, New York 10038

COLLINS, DOUGLAS & ELIE
2211 Dryades Street
New Orleans, Louisiana

# CERTIFICATE

I certify that a copy of the foregoing Application has this day been served upon the District Attorney for the 21st Judicial District Court by mailing a copy of the same to his address in Amite, Louisiana.

Baton Rouge, Louisiana, April _____, 1966.

MURPHY W. BELL

| | |
|---|---|
| STATE OF LOUISIANA | NUMBER: 1250-B |
| VS. | 21ST JUDICIAL DISTRICT COURT |
| | PARISH OF ST. HELENA |
| FRED LACY | STATE OF LOUISIANA |

## APPLICATION FOR BILL OF PARTICULARS

NOW INTO COURT, through undersigned counsel comes FRED LACY, accused herein, reserving all rights to file additional pleadings, plead that he is unable to properly prepare his defense until he is furnished with the Bill of Particulars upon the following:

1. Who are the "others" 16 years or under 17 years, whom the accused contributed to the delinquency of, as alleged in the information?
2. Does the State contend that Georgia Rankins and the "others" had no right to be in the School Board Office?
3. What place or places does the State contend "that he or she had no right to be" in violation of Article 92?
4. What laws of the State of Louisiana and the town of Greensburg does the State contend that the accused encouraged Georgia Rankins and "others" to violate?

WHEREFORE MOVER PRAYS, that the State of Louisiana through the District Attorney be ordered by the Court to furnish the said Bill of Particulars above requested, and that the service of same be made upon your defendant through undersigned counsel.

By Attorney:

MURPHY W. BELL
971 South 13th Street
Baton Rouge, Louisiana

OF COUNSEL:

CARL RACHLIN, ESQ.
150 Nassau St.
New York, New York 10038

COLLINS, DOUGLAS & ELIE
Attorneys at Law
2211 Dryades St.
New Orleans, Louisiana

# CERTIFICATE

I certify that a copy of the foregoing Application has this day been served upon the District Attorney for the 21st Judicial District Court by mailing a copy of the same to his address in Amite, Louisiana.

Baton Rouge, Louisiana, April ______, 1966.

MURPHY W. BELL

| | |
|---|---|
| STATE OF LOUISIANA | NUMBER: 1251-A |
| VS. | 21ST JUDICIAL DISTRICT COURT |
| | PARISH OF ST. HELENA |
| FRED LACY | STATE OF LOUISIANA |

## APPLICATION FOR BILL OF PARTICULARS

NOW INTO COURT through undersigned Counsel, comes FRED LACY reserving his rights to file other special pleadings herein, plead that he is unable to properly prepare his defense herein until he is furnished with a Bill of Particulars upon the following:

1. Who are the "other persons" that the accused urged and encouraged to go upon and remain in St. Helena Parish School Board office building, after having been forbidden to do so?
2. Who "forbid" Fred Lacy not to entice, solicit, urge, encourage and procure the "other persons" to go upon and remain in St. Helena Parish School Board office building?

WHEREFORE YOUR MOVER PRAYS, that the State of Louisiana, through the District Attorney be ordered by the Court to furnish the said Bill of Particulars above requested, and that service of same be made upon your defendant through undersigned Counsel.

By Attorney:

MURPHY W. BELL

OF COUNSEL:

CARL RACHLIN, ESQ.
150 Nassau St., N.Y., N.Y.

COLLINS, DOUGLAS & ELIE
2211 Dryades St., New Orleans, La.

## CERTIFICATE

I certify that a copy of the foregoing Application has this day been mailed to the District Attorney for the 21st Judicial District Court to his address in Amite, Louisiana.

Baton Rouge, Louisiana, April ______, 1966.

MURPHY W. BELL

| | | |
|---|---|---|
| STATE OF LOUISIANA | | NUMBER: 1250-B |
| VS. | | 21ST JUDICIAL DISTRICT COURT |
| | | PARISH OF ST. HELENA |
| FRED LACY | | STATE OF LOUISIANA |

## MOTION FOR JURY TRIAL

NOW COMES FRED LACY, accused herein and moves this Honorable Court for a trial by jury in this cause for this:

-1-

That the accused, a white man, is a citizen of the State of New Jersey who is residing in the State of Louisiana, Parish of St. Helena for the sole purpose of assisting Negro citizens to obtain their equal rights and to register to vote; this is contrary to the policies and practices of the said State and Parish, and that mover alleges he will be unable to get a fair trial consistent with the Fifth, Sixth and Fourteenth Amendments to the United States Constitution unless this Motion is granted.

WHEREFORE MOVER PRAYS that this Honorable Court order a trial by jury in the instant cause.

BY ATTORNEY:

MURPHY W. BELL
971 South 13th Street
Baton Rouge, Louisiana

OF COUNSEL:

CARL RACHLIN, ESQ.
150 Nassau St.
New York, New York 10038

COLLINS, DOUGLAS & ELIE
2211 Dryades Street
New Orleans, Louisiana

## ORDER

Considering the foregoing IT IS ORDERED that the accused be tried in this cause by a jury of ______ persons, good and true.

Greensburg, Louisiana, April ______, 1966.

JUDGE

| | | |
|---|---|---|
| STATE OF LOUISIANA | ) | NUMBER: 1252-B |
| | ) | 21ST JUDICIAL DISTRICT COURT |
| VS. | ) | PARISH OF ST. HELENA |
| FRED LACY | ) | STATE OF LOUISIANA |

---

## MOTION TO QUASH

NOW INTO COURT through undersigned counsel, comes FRED LACY, accused herein, reserving all rights to file additional pleadings, now moves this Honorable Court to quash the Bill of Information for the following reasons, to-wit:

1.

That Article 63.3 of Louisiana Criminal Code is unconstitutional on its face:

a) Because it violates the liberty of free speech guaranteed under the First and Fourteenth Amendments of the United States Constitution.

b) That the statute upon which the prosecution is based is to broad, to vague and indefinite to establish an ascertainable standard of guilt thus denying your accused proper notice for which crime he is charged with in order to properly prepare a defense, violating Article I, Sec. 10 of the Constitution of the State of Louisiana, and the due process clause of the Fourteenth Amendment to the United States Constitution.

c) The statute is further unconstitutional because it incorporates an unlawful delegation of authority to third parties on a subjective basis thus denying to your mover proper notice of what the statute means on a purely objective standard and basis, said delegation being offensive to both State and Federal Constitutions.

d) That the statute under which the defendant is charged is unconstitutional in its application, if construed as here, to proscribe free speech and peaceable assembly, or petitioning the government for a redress of grievances.

WHEREFORE MOVER PRAYS, that this Motion to Quash be sustained and that the Bill of Information be declared null and void. For all general and equitable relief.

BY ATTORNEY:

MURPHY W. BELL
971 South 13th Street
Baton Rouge, Louisiana

OF COUNSEL:

CARL RACHLIN, ESQ.
150 Nassau Street
New York, New York 10038

COLLINS, DOUGLAS & ELIE
Attorneys at Law
2211 Dryades Street
New Orleans, Louisiana

## CERTIFICATE

I certify that a copy of the foregoing Motion has this day been served upon the District Attorney for the 21st Judicial District Court by mailing a copy of the same to his address in Amite, Louisiana.

Baton Rouge, Louisiana, April ______, 1966.

MURPHY W. BELL

STATE OF LOUISIANA § NUMBER: 1249-A
§ 21ST JUDICIAL DISTRICT COURT
VS. § PARISH OF ST. HELENA
FRED LACY § STATE OF LOUISIANA

## MOTION TO QUASH

NOW INTO COURT, through undersigned Counsel, comes FRED LACY, made defendant in the above entitled and numbered cause and moves to quash the Bill of Information for the following reasons, to-wit:

1.

That the statute on which the prosecution is based and the information is founded does not inform the defendant of which, if any, crime he has committed under Laws of the State of Louisiana, and of the United States of America because of overbreath, vagueness and ambiguity, thus violating the Constitution of Louisiana and the United States Constitution.

2.

That the statute is unconstitutional on its face, in that it is vague in not setting forth specific criminal conduct with the requisite intent required by the laws of the State of Louisiana, and more specifically, your mover is being deprived of his rights under Article I, Sec. 2, 10 & 11 of the Constitution of the State of Louisiana, as well as those under the Fourteenth Amendment of the United States Constitution, because of the unconstitutional application of this law. That the statute in question is unconstitutional because of the ambiguity in trying to determine what is meant by the clause "which will render movement thereon more difficult"; such clause being interpertated on a purely subjective basis thereby violating the due process clause of the Fourteenth Amendment which requires that the defendant in a criminal proceeding be given adequate notice of the crime with which he has been charged.

**WHEREFORE DEFENDANT PRAYS**, that this Motion to Quash be maintained and that the Bill of Information be declared null and void, and that he be discharged therefrom.

Mover prays for all further orders necessary and for general and equitable relief.

BY ATTORNEY:

MURPHY W. BELL
971 South 13th Street
Baton Rouge, Louisiana 70802

OF COUNSEL:

CARL RACHLIN, ESQ.
150 Nassau Street
New York, New York 10038

COLLINS DOUGLAS & ELIE
2211 Dryades Street
New Orleans, Louisiana

## CERTIFICATE

I certify that a copy of the foregoing Motion has this day been served upon the District Attorney for the 21st Judicial District Court by mailing a copy of the same to his address in Amite, Louisiana.

Baton Rouge, Louisiana, April ______, 1966.

MURPHY W. BELL

WHEREFORE DEFENDANT PRAYS, that this Motion to Quash be maintained and that the Bill of Information be declared null and void, and that he be discharged therefrom.

Mover prays for all further orders necessary and for genera and equitable relief.

BY ATTORNEY:

MURPHY W. BELL
971 South 13th Street
Baton Rouge, Louisiana 70802

OF COUNSEL:

CARL RACHLIN, ESQ.
150 Nassau Street
New York, New York 10038

COLLINS DOUGLAS & ELIE
2211 Dryades Street
New Orleans, Louisiana

## CERTIFICATE

I certify that a copy of the foregoing Motion has this day been served upon the District Attorney for the 21st Judicial District Court by mailing a copy of the same to his address in Amite, Louisiana.

Baton Rouge, Louisiana, April ______, 1966.

MURPHY W. BELL

| | | |
|---|---|---|
| **STATE OF LOUISIANA** | | **NUMBER: 1251-A** |
| | | **21ST JUDICIAL DISTRICT COURT** |
| **VS.** | | **PARISH OF ST. HELENA** |
| **FRED LACY** | | **STATE OF LOUISIANA** |

---

## MOTION TO QUASH

NOW INTO COURT through undersigned Counsel, comes FRED LACY accused herein, and reserving all rights to file additional pleadings, now moves this Honorable Court to Quash the Bill of Information for the following reasons, to-wit:

1.

That Revised Statute 63.4 of the Louisiana Criminal Code is unconstitutional on its face:

a) Because it violates the liberty of freedom of speech guaranteed under the First and Fourteenth Amendments to the United States Constitution.

b) Because it gives defendant only qualified privilege of free speech whereas the Constitution of the United States gives an unqualified common right to free speech.

c) Because it incorporates invalid status in that it delegates authority to private persons on a subjective basis contrary to the State and Federal Constitutions.

d) Because the said statute is not narrowly drawn evidencing a legislative intent to reach conduct posing a threat to a substantial interest which the State may constitutionally prohibit.

e) The statutes under which the defendant is charged are unconstitutional in their application if construed as here to proscribe free speech and assembly.

WHEREFORE YOUR MOVER PRAYS, that after due proof hereon that the Motion to quash be maintained and that said information be declared null and void and that he be discharged therefrom.

BY ATTORNEY:

MURPHY W. BELL

OF COUNSEL:

CARL RACHLIN, ESQ.
150 Nassau Street
New York, New York 10038

COLLINS, DOUGLAS & ELIE
2211 Dryades Street
New Orleans, Louisiana

CERTIFICATE

I certify that a copy of the foregoing Motion has this day been served upon the District Attorney for the 21st Judicial District Court by mailing a copy of the same to his address in Amite, Louisiana.

Baton Rouge, Louisiana, April ______, 1966.

MURPHY W. BELL

| | |
|---|---|
| STATE OF LOUISIANA | NUMBER: 1250-B |
| VS. | 21ST JUDICIAL DISTRICT COURT |
| | PARISH OF ST. HELENA |
| FRED LACY | STATE OF LOUISIANA |

## MOTION TO QUASH

NOW INTO COURT through undersigned Counsel comes FRED LACY herein, reserving all rights to file additional pleadings, now moves this Honorable Court to quash the Bill of Information for the following reasons, to-wit:

1.

That the Statute, Revised Statute 92, under which defendant is charged is unconstitutional on its face:

a) Because it violates the liberty of free speech guaranteed under the First and Fourteenth Amendments to the United States Constitution.

b) Because it gives defendant only qualified privilege of free speech, whereas the Constitution of the United States gives unqualified free speech and assembly.

c) Because it incorporates invalid standards in that it directs purnishment for lawful conduct.

d) The Statute is void for vagueness because of overbreath.

WHEREFORE MOVER PRAYS, that after due proof hereon that the Motion to Quash be maintained and that the said Information be declared null and void and that he be discharged therefrom.

BY ATTORNEY:

MURPHY W. BELL
971 South 13th Street
Baton Rouge, Louisiana 70802

OF COUNSEL:

CARL RACHLIN, ESQ.
150 Nassau Street
New York, New York 10038

COLLINS, DOUGLAS & ELIE
Attorneys at Law
2211 Dryades Street
New Orleans, Louisiana

# CERTIFICATE

I certify that a copy of the foregoing Motion has this day been served upon the District Attorney for the 21st Judicial District Court by mailing a copy of the same to his address in Amite, Louisiana.

Baton Rouge, Louisiana, April ______, 1966.

MURPHY W. BELL

TELEPHONE
348-3572

**MURPHY W. BELL**
ATTORNEY AT LAW
971 SOUTH 13TH STREET
BATON ROUGE, LA.

May 9, 1966

Carl Rachlin, Esq.
150 Nassau St.
New York, New York 10038

Re: State v. Lacy

Dear Mr. Rachlin:

Two additional charges were filed against Fred Lacy. Trial for these are scheduled for May 12, 1966. Will remove to Federal District Court later.

Yours in Freedom,

Murphy W. Bell (mew)

MURPHY W. BELL

MWB/mew

Encls.

TELEPHONE
348-3572

**MURPHY W. BELL**
ATTORNEY AT LAW
971 SOUTH 13TH STREET
BATON ROUGE, LA.

May 9, 1966

Carl Rachlin, Esq.
150 Nassau St.
New York, New York 10038

Re: State v. Lacy

Dear Mr. Rachlin:

Two additional charges were filed against Fred Lacy. Trial for these are scheduled for May 12, 1966. Will remove to Federal District Court later.

Yours in Freedom,

Murphy W. Bell (mew)
MURPHY W. BELL

MWB/mew

Encls.

| | | |
|---|---|---|
| STATE OF LOUISIANA | | NUMBER: 1250-B |
| VS. | | 21ST JUDICIAL DISTRICT COURT |
| | | PARISH OF ST. HELENA |
| FRED LACY | | STATE OF LOUISIANA |

## MOTION TO QUASH

NOW INTO COURT through undersigned Counsel comes **FRED LACY** herein, reserving all rights to file additional pleadings, now moves this Honorable Court to quash the Bill of Information for the following reasons, to-wit:

1.

That the Statute, Revised Statute 92, under which defendant is charged is unconstitutional on its face:

a) Because it violates the liberty of free speech guaranteed under the First and Fourteenth Amendments to the United States Constitution.

b) Because it gives defendant only qualified privilege of free speech, whereas the Constitution of the United States gives unqualified free speech and assembly.

c) Because it incorporates invalid standards in that it directs purnishment for lawful conduct.

d) The Statute is void for vagueness because of overbreath.

WHEREFORE MOVER PRAYS, that after due proof hereon that the Motion to Quash be maintained and that the said Information be declared null and void and that he be discharged therefrom.

BY ATTORNEY:

MURPHY W. BELL
971 South 13th Street
Baton Rouge, Louisiana 70802

OF COUNSEL:

CARL RACHLIN, ESQ.
150 Nassau Street
New York, New York 10038

COLLINS, DOUGLAS & ELIE
Attorneys at Law
2211 Dryades Street
New Orleans, Louisiana

# CERTIFICATE

I certify that a copy of the foregoing Motion has this day been served upon the District Attorney for the 21st Judicial District Court by mailing a copy of the same to his address in Amite, Louisiana.

Baton Rouge, Louisiana, April ______, 1966.

MURPHY W. BELL

OWNED TAXI CABS IN JACKSONVILLE)

Folder 16

State Historical Society Of Wisconsin

Please Retain Original Order

[1966, February 28]

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY,
Petitioner,

-vs-

CITY OF JACKSONVILLE, FLORIDA, CITY COUNCIL OF JACKSONVILLE, FLORIDA,

CLYDE C. CANNON, Chairman, Public Service and Motor Transportation Committee of Said Council, and R. R. WHITMORE,

Respondents.

CIVIL ACTION NO. 66-187-Civ-J

## PETITION FOR DECLARATORY JUDGEMENT AND WRIT OF MANDAMUS

In the matter of the so called Public Hearing upon application of William Bernard Langley, Petitioner in the above styled cause, for permit to operate taxicabs within the City of Jacksonville, Florida.

Petition of William Bernard Langley for Declaratory Judgement as to the constititionality and lawfulness of the so-called public hearing held Tuesday, December 14, 1965, at 10:00 o'clock a. m., in City Council Chambers, City Hall, Jacksonville, Florida. Said hearing being held, supposedly, to determine a need and necessity for additional taxicab service within the City of Jacksonville, Florida upon the application of William Bernard Langley, hereinafter called "Petitioner", for permit to operate taxicabs within the City of Jacksonville, Florida. Petitioner prays for a determination of violations of the following:

1. Violation and deprivation of Petitioner's constitutional rights under the Equal Protection of the Law Clause, Section 1, of the Fourteenth Amendment to the Constitution of the United States of America.

2. Violation and deprivation of Petitioner's constitutional rights under the Due Process of the Law Clause, Section 1, of the Fourteenth Amendment to the Constitution of the United States of America.

3. Violation and deprivation of Petitioner's constitutional rights under the Due Process In Civil Proceedings Clause, Section 1, of the Fourteenth Amendment to the Constitution of the United States of America.

4. Deprivation of Petitioner's rights under Section 1981 and 1982 of Title 42 U S. C.

5. Violation of and conflict with the provisions of Section 2 of the Sherman Anti-Trust Act.

This action arises under the Fourteenth Amendment to the Constitution of the United States of America, Sections 1981 and 1982 of Title 42 of the United States Code, and Section 2 of the Sherman Anti-Trust Act, as hereinafter more fully appears. Jurisdiction is conferred on this Court by Title 28, United States Code, Judiciary and Judicial Procedure, Section 1343.

To the above-named United States District Court:

Petitioner respectfully shows:

1. I am the plaintiff in the above matter before this Honorable Court.

2. I reside at 5819 Moncrief Road, in City of Jacksonville, County of Duval, and State of Florida.

3. The ordinances of the City of Jacksonville, Florida state, in essence, that anyone desiring to operate taxicabs in the City of Jacksonville, Florida must file a written application with the President of the City Council of Jacksonville, Florida. Upon receipt of said application, City Council will set a time and place for a public hearing to determine a need and necessity for additional taxi service.

The current holders of permits and applicant(s) will be notified of the time and place for such hearing.

If it is determined by and through said public hearing that there is a need for additional permits, applicant will receive requested permits. If there are more than one applicant, City Council will grant permits to the applicant deemed most qualified to carry on such business.

4. Your Petitioner has filed application with the City Council of Jacksonville, Florida many times for permit to operate taxicabs within the City of Jacksonville, and has **always** been refused.

5. On January 25, 1965, your Petitioner filed application with the City Council of Jacksonville, Florida to operate taxicabs within the City, a copy of which is attached hereto and made a part hereof and marked "Exhibit A." Above named City Council of Jacksonville, Florida hereinafter called "City Council," failed to set a public hearing upon the application. On February 24, 1965, and on March 29, 1965 Petitioner filed amendments to his application of January 25, 1965 seeking to obtain some action by City Council on his application, copies of which are attached hereto and made a part hereof and marked "Exhibit B" and Exhibit "C". City Council still did not set a public hearing in accordance with law. On November 9, 1965, Petitioner addressed a letter to City Council requesting that a public hearing, in accordance with law be held to determine a need and necessity for addition taxicab service, a copy of which is attached hereto and made a part hereof and marked "Exhibit D". On December 10, 1965, almost eleven (11) months after Petitioner filed his application, City Council finally

Notified Petitioner, through regular United States mail, of a hearing to be held December 14, 1965, at 10:00 a.m., a copy of which is attached hereto and made a part hereof and marked "Exhibit E".

Petitioner requested Clyde C. Cannon, Chairman of the Committee on Public Service and Motor Transportation, to postpone the hearing to a later date and that the time be changed to late afternoon or night--explaining that insufficient notice had been given to notify interested parties and that the time of hearing was such that the class of people interested and in need of additional taxi service were working people and, for the most part, could not attend a hearing at 10:00 a.m., in that they would have to be at work. Clyde Cannon arbitrarily refused the request.

6. Your Petitioner was unable, because of such short notice of hearing, to contact interested persons who would not have to be at work at 10:00 a.m. and who therefore would be able to appear. However, Petitioner presented, at the hearing, a petition signed by one thousand (1000) persons, with addresses shown, petitioning City Council for addition taxi service.

Ninety-nine percent (99%) of the persons appearing against additional permits were taxi drivers of City licensed taxi companies, city bus drivers, taxi cab and bus company officials, union officials, business associates, and other hirelings. There were approximately 200 of these persons present.

7. One R. R. Whitmore has always filed application for permits at the same time as Petitioner. In the year 1961, R. R. Whitmore filed application at the same time as Petitioner and appeared at the so-called public hearing. Four years later, R. R. Whitmore filed application for permits at the same time that Petitioner

filed application and was notified of the December 1965 hearing the same time as Petitioner. However, said R. R. Whitmore has never, at any time, attempted to show a need and necessity for additional taxi service.

Your Petitioner would show to this Honorable Court that this is too much to be mere coincidence and that this is by design and that aforementioned R. R. Whitmore does not in truth desire taxi permits. Said R. R. Whitmore and City Council have entered into a conspiracy to deprive Petitioner of his constitutional rights by preventing Petitioner, in any event, from obtaining permits..... in this manner:

1. City Council could more easily determine no need for the combined number of permits requested by R. R. Whitmore and Petitioner.
2. In the event Petitioner, in some manner, is able to prove a need for additional permits, City Council could give the permits to R. R. Whitmore, who is a white man, rather than to Petitioner who is a Negro.

8. There are six (6) City licensed taxi companies in Jacksonville. All of these companies are white owned. There are no Negroes who hold permits to operate taxicabs in Jacksonville, Florida.

9. Petitioner would show unto this Honorable Court that all of the foregoing shows a picture of conspiracy to deprive Petitioner of his constitutional rights in the following manner:

1. Refusal to set a time and place for public hearing until almost eleven (11) months had passed from date of application.
2. Refusal to give proper notice of said public hearing.
3. Refusal to set the time of hearing at such a time when interested persons could appear.
4. Refusal to grant an in-good-faith public hearing to make a true evaluation of need and necessity for additional taxi service.

5. Arbitrarily denying permits to Petitioner as a result of a so-called public hearing that was not held in good faith.

6. Denying a great number of interested persons the opportunity to appear and express their views and to offer testimony that would show a need for additional taxi service.

7. Holding a public hearing designed, for all practical purposes, to deny Petitioner taxi permits.

10. Petitioner would further show unto this Honorable Court that this action is taken against him because:

1. Petitioner is a Negro, and because of his race is being denied the opportunities of a free enterprise system and excluded from entering into this type of occupational pursuit the same as White persons.

2. City Council is conspiring further to protect the monopoly presently enjoyed by the white-owned, City licensed taxi companies.

11. Petitioner would show further unto this Honorable Court that this is another incident in the systematic pattern in the South; in State Court, State all-white juries, and local governmental agencies, to deny Negroes justice and to deprive Negroes of their constitutional rights.

12. Petitioner would show further unto this Honorable Court that Petitioner has been denied an in-good-faith public hearing, that no public hearing has been held, and that without the intervention of this Court, none will ever be held on the application of permits by Petitioner.

Paragraphs 3, Section 1343, Chapter 85, Title 28, United State Code, Judiciary and Judicial Procedure gives Federal District Courts original jurisdiction of any civil action authorized by law to be commenced by any person:

> "To redress the deprivation, under color any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of

> Congress providing for equal rights of
> citizens or of all persons within the
> jurisdiction of the United States."

Wherefore, your Petitioner prays that this Honorable Court accepts this petition and that it assume jurisdiction of this action, and that this Court will declare and decree the Public Hearing of December 14, 1965 and relative matters pertaining thereto, to be unconstitutional and unlawful and that this Court will issue an order requiring the City Council of the City of Jacksonville, Florida to hold a public hearing upon sufficient notice, within a reasonable length of time and not more than thirty (30) days and held after 5:00 p.m. and for such other relief as may seem fit and proper.

Your Petitioner further prays that this Honorable Court will retain jurisdiction of the parties and of all matters pertaining thereto.

Dated: February 28, 1966

William Bernard Langley
William Bernard Langley,
Petitioner

United States of America,

Middle District of Florida,

County of Duval, ss.

William Bernard Langley, being duly sworn, deposes and says that he is the petitioner named in the foregoing petition subscribed by him; that he has read the contents thereof, and that the statements made are true, as he verily believes.

William Bernard Langley,
Petitioner

5819 Moncrief Road
Jacksonville, Florida
January 25, 1965

Honorable Cecil F. Lowe, President
City Council of Jacksonville, Florida
City Hall Building
Jacksonville, Florida

Sir:

Application is hereby respectfully submitted by the undersigned for permit to operate 25 non-metered taxicabs in the City of Jacksonville, Florida.

Permits are requested to be made to the undersigned.

Principal location and place from where taxicabs will be operated is 5819 Moncrief Road, Jacksonville, Florida.

Respectfully submitted,

William B. Langley

William B. Langley

EXHIBIT A

5819 Moncrief Road
Jacksonville, Florida
February 24, 1965

Honorable Cecil F. Love, President
City Council of Jacksonville, Florida
City Hall Building
Jacksonville, Florida.

Sir:

The undersigned hereby amends his application of January 25, 1965 in the following manner:

> Application is hereby submitted by the undersigned for permits to operate ten(10) non-metered taxicabs in the City of Jacksonville, Florida.
>
> Permits are requested to be made to the undersigned.
>
> Principal location and place from where taxicabs will be operated is 5819 Moncrief Road, Jacksonville, Florida.

Respectfully submitted,
William B. Langley
William B. Langley

EXHIBIT B

5819 Moncrief Road
Jacksonville, Florida
March 29, 1965

Honorable Cecil F. Lowe, President
City Council of Jacksonville, Florida
City Hall Building
Jacksonville, Florida

Dear Sir:

The undersigned hereby further amends his application of January 25, 1965 in the following manner:

> Application is hereby submitted by the undersigned for permit to operate twenty-five (25) non-metered taxicabs and ten (10) metered taxicabs in the City of Jacksonville, Florida.
>
> Permits are requested to be made to the undersigned.
>
> Principal location and place from where taxicabs will be operated is 5819 Moncrief Road, Jacksonville, Florida.

Respectfully submitted,
William E. Langley
William E. Langley

WEL/lxt

EXHIBIT C

5519 Moncrief Road
Jacksonville, Florida
November 9, 1965

Honorable W. O. Mattox, Jr., President
City Council of Jacksonville, Florida
City Hall Building
Jacksonville, Florida

Dear Sir:

In connection with my application for taxicab permits dated January 25, 1965 and amended March 29, 1965, I respectfully request that City Council, in accordance with law, will fix a time and place for public hearing to determine a need and necessity for additional taxicab permits in the city of Jacksonville, Florida.

Very truly yours,

William Bernard Langley

William Bernard Langley

WBL/d

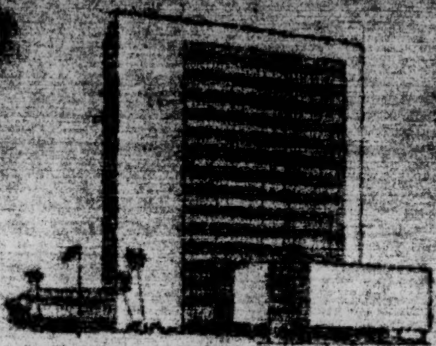
EXHIBIT D

CITY OF JACKSONVILLE

JACKSONVILLE, FLORIDA

OFFICE OF RECORDER

W. C. ALMAND, CITY RECORDER



December 9, 1965

Mr. R. R. Whitmore
2639 St. Johns Avenue
Jacksonville, Florida

Mr. William B. Langley ✓
5819 Moncrief Road
Jacksonville, Florida

Gentlemen:

Councilman Clyde C. Cannon, Chairman of the Committee on Public Service and Motor Transportation, has called a meeting of the Committee to hold a hearing on the application and amended applications of William B. Langley and the application of R. R. Whitmore for permits to operate metered and non-metered taxicabs in Jacksonville, Florida, and set the date of Tuesday, December 14, 1965, beginning at 10:00 o'clock A. M., in City Council Chambers, City Hall, Jacksonville, Florida, as the time and place of such hearings by said Committee.

Yours very truly,

CITY RECORDER.

WCA:FMC.

EXHIBIT E

[1966, March 21]

ok

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY, )
Petitioner, )
-vs- )
CITY OF JACKSONVILLE, FLORIDA, CITY COUNCIL OF JACKSONVILLE, FLORIDA, )
CLYDE C. CANNON, Chairman, Public Service and Motor Transportation Committee of Said Council, R. R. WHITMORE, and NEW DEAL CAB COMPANY, a FLORIDA CORPORATION, )
Respondents. )
= = = = = = = = = = = = = = = = )

CIVIL ACTION NO. 66-187-CIV-J

## AMENDED COMPLAINT

(PETITION FOR DECLARATORY JUDGEMENT AND WRIT OF MANDAMUS)

Pursuant to the provisions of Rule 15, Federal Rules of Civil Procedure, William Bernard Langley, petitioner in above styled cause, amends his original complaint in the following manner:

1. Jurisdiction is further conferred upon this Court by Section 2201, Title 28, U S C.

2. New Deal Cab Company, A Florida corporation, is hereby named as a respondent in the above cause. In support of this Petitioner says:

1. New Deal Cab Company, hereinafter called "New Deal", by and through its' attorney and agents, have conspired to deprive Petitioner of his constitutional rights under the Due Process of Law, Equal Protection of the Law, and Due Process In Civil Proceedings Clauses of the Fourteenth Amendment to the Constitution of The United States of America, applicable sections of Title 42, U S C, and applicable sections of the Sherman Anti-Trust Act in the following manner:

(1) Offering bribe, in the form of money, and attempting to cause persons to file a fradulent application

for taxi permits.

(2) Offering to give money or monetary credits to persons to appear in opposition to the granting of additional permits at the so-called public hearing of December 14, 1965.

(3) Giving money or monetary credits to persons who appeared in opposition to the granting of additional permits at the so-called public hearing of December 14, 1965.

2. Your Petitioner would show unto this Honorable Court that all of the foregoing is designed by New Deal, for itself and in behalf of other city licensed taxicab companies, to maintain a monopoly, to prevent an in-good-faith public hearing, to deny Petitioner taxi permits, and to deny the benefits of free enterprise enjoyed by White persons to Petitioner who is a Negro.

Dated March 21, 1966

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

United States Of America,
Middle District of Florida,
County of Duval, ss.

William Bernard Langley, being duly sworn, deposes and says that he is the petitioner named in the foregoing amended complaint subscribed by him; that he has read the contents thereof, and that the statements made are true, as he verily believes.

William Bernard Langley
William Bernard Langley,
Petitioner

March 21, 1966

Ozella C. Addison
Notary Public, State of Florida at Large
My commission expires June 3, 1967

## CERTIFICATE OF MAILING

I hereby certify that on March 21, 1966, I served one copy of the foregoing ~~Amended Complaint~~ Interrogatories to Respondent upon William Madison, Attorney for the City of Jacksonville, Florida at City Hall, by depositing one (1) copy thereof in the United States Mail, postage prepaid, in an envelope addressed to said attorney, which address is the last address of the attorney known to me.

I further certify that on March 21, 1966, I served one (1) copy of the ~~aforementioned~~ foregoing Interrogatories to Respondent ~~Amended Complaint~~ upon Harry B. Fozzard, attorney for the City Council of Jacksonville, Florida at Florida Title Building, by depositing one copy thereof in the United States mail, postage prepaid, in an envelope addressed to said attorney, which address is the last address of the attorney known to me.

I further certify that on March 21, 1966, I served one (1) copy of the ~~aforementioned~~ foregoing Interrogatories to Respondent ~~Amended Complaint~~ upon R. R. Whitmore at 2839 St. Johns Avenue, Jacksonville, Florida by depositing one copy thereof in the United States Mail, postage prepaid, in an envelope addressed to said R. R. Whitmore, which address is the last address of the respondent known to me.

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

Whitmore

[1966, March 24]

**UNITED STATES DISTRICT COURT FOR**
**THE MIDDLE DISTRICT OF FLORIDA**
**JACKSONVILLE DIVISION**

WILLIAM BERNARD LANGLEY,

Petitioner,

vs. CIVIL ACTION NO. 66-187-Civ-J

CITY OF JACKSONVILLE, FLORIDA,
CITY COUNCIL OF JACKSONVILLE,
FLORIDA, CLYDE C. CANNON,
Chairman, Public Service and
Motor Transportation Committee
of said Council, and R. R.
WHITMORE,

Respondents.

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## MOTION TO QUASH

Comes now the Respondent, R. R. WHITMORE, together with his undersigned attorney, and moves this Honorable Court to quash the service of process alleged to have been made upon this Respondent, by the United States Marshal on March 9, 1966, and Respondent alleges as follows:

1. That said summons was not personally served upon this Respondent by said United States Marshal as required by Rule 4 of the Federal Rules of Civil Procedure.

2. That said summons was left by the Deputy Marshal who purported to serve the same, at the office of the said R. R. WHITMORE, located at 121 West Bay Street, in Jacksonville, Duval County, Florida, and there left with this Defendant's secretary, Mr. D. R. Howell.

3. That said summons was not served upon Respondent personally or left at his usual place of abode as required by law.

Sworn to and subscribed
before me at Jacksonville,
Duval County, Florida, this
the 24 day of March, 1966.

Jessea K Skipper
NOTARY PUBLIC, STATE OF FLORIDA
MY COMMISSION EXPIRES:_________

R. R. Whitmore
R. R. WHITMORE

/s/ John Paul Howard
JOHN PAUL HOWARD
205 Florida Title Building
Jacksonville, Florida
Attorney for Respondent

## BRIEF IN SUPPORT OF MOTION TO QUASH

In support of Respondent's Motion to Quash service of process, Respondent says:

1. Rule 4 of the Federal Rules of Civil Procedure provides as follows:

> "(d) Summons: Personal Service. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:
>
> (1) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process."

/s/ John Paul Howard
JOHN PAUL HOWARD
205 Florida Title Building
Jacksonville, Florida
Attorney for Respondent

I DO CERTIFY that copy hereof has been furnished to WILLIAM BERNARD LANGLEY, Petitioner, 5819 Moncrief Road, Jacksonville, Florida, to WILLIAM M. MADISON, City Attorney, City Hall, Jacksonville, Florida, and to HARRY FOZZARD, Attorney for the City Council of Jacksonville, 905 Florida Title Building, Jacksonville, Florida, by mail, this the 24 day of March, A. D., 1966.

/s/ John Paul Howard
Attorney

[1966, March 28]

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY,

Petitioner,

-vs-

CIVIL ACTION NO. 66-187-CIV-J

CITY OF JACKSONVILLE,
FLORIDA, CITY COUNCIL
OF JACKSONVILLE, FLORIDA,

CLYDE C. CANNON, Chairman,
Public Service and Motor
Transportation Committee
of Said Council, H. R. WHITMORE, and NEW DEAL CAB
COMPANY, a FLORIDA CORPORATION,

Respondents.

INTERROGATORIES TO RESPONDENT

TO: H. R. WHITMORE
2839 ST. JOHNS AVENUE
JACKSONVILLE, FLORIDA

In accordance with Rule 33, Federal Rules of Civil Procedure, you are required within 15 days of service hereof, to answer separately, fully, in writing, and under oath the following interrogatories:

1. Have you at any time within the past seven (7) years, applied for permit to operate taxicabs within the City of Jacksonville, Florida?

2. If the answer is affirmative, give the dates of such applications.

3. Have you, at anytime within the past seven (7) years, attended a public hearing presumably to determine a need and necessity for additional taxicab service in the City of Jacksonville, Florida?

4. If the answer to question number three (3) is affirmative, state whether you appeared as a principal party at such hearings.

5. If your answers to questions one (1) and three (3) are affirmative, , did you, at anytime, at any aforementioned public hearing, attempt to show a need and necessity for additional taxi service within the City of Jacksonville, Florida?

6. If your answer to question number five (5) if negative, state your reasons for not doing so.

7. If your answer to question number five (5) is affirmative, state in what manner you attempted to show a need and necessity for additional taxi service.

8. If your answer to question number three (3) is affirmative, give the name of any other person appearing at said public hearings seeking permits for additional taxi service within the City of Jacksonville, Florida.

9. If the answer to question number one (1) is affirmative, give the name of the person or persons whose applications were filed on or about the same dates as yours were filed.

10. Were your applications filed after, prior to, or on the same dates as those of the person or persons indicated in question number nine (9)?

11. If your applications were filed after, or on the same dates as the applications of other persons or person, was this mere coincidence?

12. In relation to question number eleven (11); if this was not mere coincidence how did this come about?

13. Were you informed by anyone when applications were filed by the persons named in your answer to question number nine (9)?

14. If your answer to question number thirteen (13) is affirmative, give the name and address of the person or persons by whom you were informed.

15. If your answer to question number thirteen (13) is affirmative, were the persons by whom you were informed employees, agents, or servants of the City of Jacksonville, Florida? In what department?

16. If your answer to question number thirteen (13) is affirmative, were the persons by whom you were informed employees, agents, or servants of any City licensed taxicab company?

17. If your answer to question number sixteen (16) is affirmative, give the name of the company or companies.

18. Were you ever instructed by anyone to file applications for additional permits on or about the same date as the undersigned petitioner?

19. If your answer to question number eighteen (18) is affirmative, give the names and addresses and state the organization, institution, or company with which they were connected.

20. If your answer to question number eighteen (18) is affirmative, describe the details of this arrangement.

21. Were you ever, at anytime, in the taxicab business?

22. If your answer to question number twenty-one (21) is affirmative, give the name of the company, and state whether or not it was a corporation.

23. If your answer to question number twenty-one (21) is affirmative, state whether you were the major share holder and your position, if a corporation.

24. Are you presently in the taxicab business?

25. If your answer to question number twenty-four (24) is negative, to whom did you sell your business or transfer your stock?

26. If your answer to question number twenty-four (24) is negative, and you did sell or transfer your business, do you own shares in the corporation that took over your business?

27. Are you a share holder in New Deal Cab Company, a Florida Corporation?

28. Do you own stock or shares in any city licensed cab company?

29. Within the past seven (7) years have you ever received any dividend, stipend in terms of money, goods, or services from any agent of a city-licensed taxicab company that is a corporation or transferee of a corporation?

30. If your answer to question number twenty-nine is affirmative, state the conditions under which and the reason for which such payment or payments were made. Give the name of the agent and the company that he/she represented.

31. Did you receive any type of payment or consideration in connection with your filing of applications for addition taxicab permits?

32. If your answer to question number thirty-one (31) is affirmative, from whom did you receive these payments or considerations?

33. Give the name and address of all persons known by you to have knowledge of one or more facts or circumstances relevant to this controversy.

Dated: March 25, 1966

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

## CERTIFICATE OF MAILING

I hereby certify that on March 28, 1966, I served one copy of the foregoing Interrogatories To Respondent upon William Madison, Attorney for the City of Jacksonville, Florida at City Hall, by depositing one (1) copy therof in the United States Mail, postage prepaid, in an envelope addressed to said attorney, which address is the last address of the attorney known to me.

I further certify that on March 28, 1966, I served one (1) copy of the foregoing Interrogatories To Respondent upon Harry B. Fozzard, attorney for the City Council of Jacksonville, Florida at Florida Title Building, by depositing one copy therof in the United States Mail, postage prepaid, in an envelope addressed to said attorney, which address is the last address of the attorney known to me.

I further certify that on March 28, 1966, I served one (1) copy of the foregoing Interrogatories To Respondent upon John Paul Howard, attorney for R. R. Whitmore, at 110 Forsyth Street, Jacksonville, Florida by depositing one copy therof in the United States Mail, postage prepaid, in an envelope addressed to said attorney which address is the last address of the attorney known to me.

I further certify that on March 28, 1966, I served a copy of the foregoing Interrogatories To Respondent upon New Deal Cab Company at 1185 Kings Road, Jacksonville, Florida by depositing one copy therof in the United States Mail, postage prepaid, in an envelope addressed to said New Deal Cab Company, which address is the last address of the Respondent known to me.

William Bernard Langley

William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

[1966, March 28]

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY,
Petitioner,
-vs-
CITY OF JACKSONVILLE, FLORIDA, CITY COUNCIL OF JACKSONVILLE, FLORIDA,
CLYDE C. CANNON, Chairman, Public Service and Motor Transportation Committee of Said Council, R. R. WHITMORE, and NEW DEAL CAB COMPANY, a FLORIDA CORPORATION,
Respondents.

CIVIL ACTION NO. 66-187-CIV-J

## INTERROGATORIES TO RESPONDENT

TO: THE CITY OF JACKSONVILLE, FLORIDA in
care of WILLIAM MADISON, ESQ., ATTORNEY
for the CITY OF JACKSONVILLE, FLORIDA
CITY HALL,
JACKSONVILLE, FLORIDA

In accordance with Rule 33, Federal Rules of Civil Procedure, you are required within 15 days of service hereof, to answer separately, fully, in writing, and under oath the following interrogatories:

1. Has the City of Jacksonville, Florida, by and through its City Attorney, at any time filed a brief and appeared as Amicus Curiae in the case of New Deal Cab Company vs William Bernard Langley?

2. When and before what court did the City of Jacksonville appear in the case of New Deal vs Langley?

3. Did the City of Jacksonville appear in an attempt to cause William Bernard Langley, hereinafter called "Petitioner", to be restrained from operating taxicabs on the streets of the City of Jacksonville in any manner?

4. Was Petitioner licensed by the State of Florida to transport passengers to any place in the State-Jacksonville included?

5. Was the City of Jacksonville, as Amicus Curiae, attempting to persuade the Florida Supreme Court to uphold a summary judgement ruled by the Florida Appellate Court to be invalid because of insufficient evidence?

6. Was it the position of the City of Jacksonville that in order for Petitioners' taxicabs to pass through the City, or to use the streets of Jacksonville in any manner, while transporting passengers for hire pursuant to the authority of his permit from the State of Florida, that a city permit must be obtained?

7. Did the City of Jacksonville ask the Florida Supreme Court to remand the case to the lower Court and to uphold a Circuit Court Injunction which restrained Petitioner from operating taxicabs on the streets of Jacksonville in any manner?

8. Did the aforementioned Circuit Court Injunction describe City permits held by New Deal Cab Company as being "in the nature of a franchise"?

9. Is a franchise, as applied to taxi operations, a form of monopoly?

10. In seeking to have upheld aforementioned Injunction describing New Deal Cab Company's permits as being "in the nature of a franchise", was the City of Jacksonville, in effect, seeking to uphold a monopoly, so to speak, for present holders of City permits?

11. Give the name and address of the person or persons who authorized the City of Jacksonville to appear as Amicus Curiae in the Florida Supreme Court against Petitioners' cause.

12. Was it known that Petitioner was a Negro?

13. Were there other taxi companies licensed solely by the State of Florida and in operation at the

time the Amicus Curiae appearance was made against Petitioner?

14. Were the above mentioned taxi companies White owned and operated?

15. Has the City of Jacksonville, at any time, intervened in any law-suit against a White-owned and operated taxi company licensed solely by the State?

16. Give the number of Petitioners' Negro taxi drivers who were arrested by the City of Jacksonville, during the period between July, 1948 and October 31, 1961, for supposedly "hacking without a license"--although Petitioner was licensed by the State of Florida.

17. Give the number of White taxi drivers of White companies under similiar license who were arrested under the same charge, during this same period.

18. Was the public hearing of December 14, 1965 held upon proper and sufficient notice?

19. Was the aforementioned public hearing sufficient whereby the City of Jacksonville could make a good and true determination of a need and necessity for additional taxi service in the interest of public convenience?

20. Does the City of Jacksonville have sole authority to issue permits for taxi operation within said City?

21. In that Circuit Court, in the case of Langley vs New Deal, has construed the picking up of a passenger in unincorpored areas and discharging him within the City, "with any degree of regularity", to be an operation within the City, is the City of Jacksonville responsible for adequate taxi service for the half million people residing in Duval County?

22. Are the 290 taxicabs, presently authorized, adequate to serve over 500,000 persons in Jacksonville and Duval County?

Dated: March 25, 1966

William Bernard Langley

William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

## CERTIFICATE OF MAILING

I hereby certify that on March 28, 1966, I served one copy of the foregoing Interrogatories To Respondent upon William Madison, Attorney for the City of Jacksonville, Florida at City Hall, by depositing one (1) copy therof in the United States Mail, postage prepaid, in an envelope addressed to said attorney, which address is the last address of the attorney known to me.

I further certify that on March 28, 1966, I served one (1) copy of the foregoing Interrogatories To Respondent upon Harry B. Fozzard, attorney for the City Council of Jacksonville, Florida at Florida Title Building, by depositing one copy therof in the United States Mail, postage prepaid, in an envelope addressed to said attorney, which address is the last address of the attorney known to me.

I further certify that on March 28, 1966, I served one (1) copy of the foregoing Interrogatories To Respondent upon John Paul Howard, attorney for R. R. Whitmore, at 110 Forsyth Street, Jacksonville, Florida by depositing one copy therof in the United States Mail, postage prepaid, in an envelope addressed to said attorney which address is the last address of the attorney known to me.

I further certify that on March 28, 1966, I served a copy of the foregoing Interrogatories To Respondent upon New Deal Cab Company at 1185 Kings Road, Jacksonville, Florida by depositing one copy therof in the United States Mail, postage prepaid, in an envelope addressed to said New Deal Cab Company, which address is the last address of the Respondent known to me.

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

[1966, March 28]

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY,

Petitioner,

-vs-

CITY OF JACKSONVILLE, FLORIDA, CITY COUNCIL OF JACKSONVILLE, FLORIDA,

CLYDE C. CANNON, Chairman, Public Service and Motor Transportation Committee of Said Council, R. R. WHITMORE, and NEW DEAL CAB COMPANY, a FLORIDA CORPORATION,

Respondents.

CIVIL ACTION NO. 66-187-CIV-J

## INTERROGATORIES TO RESPONDENT

TO: CLYDE C. CANNON, Chairman,
PUBLIC SERVICE AND MOTOR TRANSPORTATION
COMMITTEE of City COUNCIL of JACKSONVILLE,
FLORIDA, in Care of HARRY B. FOZZARD, Attorney
for Said Council.
FLORIDA TITLE BUILDING,
JACKSONVILLE, FLORIDA.

In accordance with Rule 33, Federal Rules of Civil Procedure, you are required within 15 days of service hereof, to answer separately, fully, in writing, and under oath the following interrogatories:

1. Upon application for permits, is the City Council of Jacksonville, Florida, hereinafter called "City Council", required by law to hold a public hearing to determine whether public welfare and convenience require the issuance of additional taxi permits?

2. Which is of most concern to City Council: public welfare and convenience, or the alleged loss of revenue by a very small percentage of taxi drivers, bus drivers, and hirelings?

3. When a local governmental agency holds a public hearing on an issue relative to public welfare and interest,

is the public to be notified of such hearing?

4. Is a public hearing required to be advertised in the official newspaper of that City and county wherein the public will be affected?

5. If your answer to question number three (3) is affirmative, is City Council required to notify the public of a public hearing?

6. Was the public notified of the so-called public hearing of December 14, 1965?

7. If your answer to question number six (6) is affirmative, give the name of the newspaper in which it was advertised, the number of days the advertisement appeared, and the dates of the advertisement.

8. If your answer to question number six (6) is negative, state why the public was not notified through advertisement.

9. Were statements made by a very small minority of taxi drivers and hirelings, alleging that if any number of additional permits were granted they would be unable to support their families, sufficient grounds for determining that no additional taxi permits should be issued?

10. Did the undersigned Petitioner, on December 14, 1965, present to City Council a petition bearing the names and addresses of one thousand (1000) persons requesting additional taxi service?

11. If your answer to question number ten (10) is affirmative, state the Councils' reason for taking into consideration the testimony of a handful of drivers, officials, and hirelings of City-licensed companies as against the petition of one thousand persons.

12. In that the state courts, in the cases of Langley vs New Deal and New Deal vs Langley, have taken the position that the City of Jacksonville has sole authority to permit taxi operation within said City, and that if a

passenger is picked up outside the city and discharged within the city "with any degree of regularity," a City permit is required; is the City Council not required to provide for necessary taxicab transportation consistent with the public welfare and convenience for the better than one half million residents of Jacksonville and Duval County?

13. Are the 290 taxicabs presently licensed by the City adequate to serve over one half million residents of Jacksonville and Duval County properly?

14. Did the undersigned Petitioner, on Monday, December 13, 1965, request, by and through his attorney for the hearing, that the public hearing be postponed and that it be held at a time when persons affected by taxi service would be able to appear and express their views, in that they would be at work at 10:00 a.m.?

15. Did you refuse?

16. If your answer to question number fifteen (15) is affirmative, why did you refuse?

17. Would not the Councils' denial of permits to Petitioner without a true determination of need and necessity be arbitrary?

Dated: March 28, 1966

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

## CERTIFICATE OF MAILING

I hereby certify that on March 28, 1966, I served one copy of the foregoing Interrogatories To Respondent upon William Madison, Attorney for the City of Jacksonville, Florida at City Hall, by depositing one (1) copy therof in the United States Mail, postage prepaid, in an envelope addressed to said attorney, which address is the last address of the attorney known to me.

I further certify that on March 28, 1966, I served one (1) copy of the foregoing Interrogatories To Respondent upon Harry B. Fozzard, attorney for the City Council of Jacksonville, Florida at Florida Title Building, by depositing one copy thereof in the United States Mail, postage prepaid, in an envelope addressed to said attorney, which address is the last address of the attorney known to me.

I further certify that on March 28, 1966, I served one (1) copy of the foregoing Interrogatories To Respondent upon John Paul Howard, attorney for R. R. Whitmore, at 110 Forsyth Street, Jacksonville, Florida by depositing one copy thereof in the United States Mail, postage prepaid, in an envelope addressed to said attorney which address is the last address of the attorney known to me.

I further certify that on March 28, 1966, I served a copy of the foregoing Interrogatories To Respondent upon New Deal Cab Company at 1185 Kings Road, Jacksonville, Florida by depositing one copy thereof in the United States Mail, postage prepaid, in an envelope addressed to said New Deal Cab Company, which address is the last address of the Respondent known to me.

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

[1966, March 28]

UNITED STATES DISTRICT COURT, FOR
THE MIDDLE DISTRICT OF FLORIDA,
JACKSONVILLE DIVISION

Civil Action File No. 66-187-Civ-J

WILLIAM BERNARD LANGLEY,

Plaintiff,

vs.

CITY OF JACKSONVILLE, FLORIDA;
CITY COUNCIL OF JACKSONVILLE, FLORIDA;
CLYDE C. CANNON, Chairman, Public Service
and Motor Transportation Committee of said
Council, and R. R. Whitmore,

Defendants.

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## MOTION

COMES NOW, Harry B. Fozzard, Attorney for City Council, of Jacksonville, Florida, and moves the Court to dismiss him from any part of these proceedings, and would show:

1. That he was served with a copy of the Petition for Declaratory Judgment and Writ of Mandamus, by the United States Marshal, on March 10, 1966, as follows: Harry B. Fozzard, Esquire, Attorney for City Council of Jacksonville, Florida, Florida Title Building, Jacksonville, Florida, and served by mail with Amendment to Petition, on March 22, 1966.

2. That the undersigned is employed by the City Council of the City of Jacksonville, as its Special Attorney for the City Council, to advise the City Council, and its committees as provided by Section 2.91 through 2.93, of the Ordinance Code of the City of Jacksonville, Florida.

3. That he is not made a party defendant in this suit.

4. That there is nothing contained in this suit, which is required to be answered by him.

Harry B. Fozzard

Harry B. Fozzard, Special
Attorney for City Council
905 Florida Title Building
Jacksonville, Florida

I HEREBY CERTIFY that a copy of the above and foregoing has been served by U. S. Mail, on William Bernard Langley, 5819 Moncrief Road, Jacksonville, Florida; William M. Madison, City Attorney, City Hall, Jacksonville, Florida; John Paul Howard, Attorney for R. R. Whitmore, 205 Florida Title Building, Jacksonville, Florida; New Deal-Lincoln Cab Company, 1185 Kings Road, Jacksonville, Florida, on this 24 day of March, A. D. 1966.

ATTORNEY

[1966, March 30]

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY, )

Petitioner, )

vs. )

CITY OF JACKSONVILLE, )
FLORIDA, CITY COUNCIL
OF JACKSONVILLE, FLORIDA, )

CLYDE C. CANNON, Chairman, )
Public Service and Motor
Transportation Committee )
of Said Council, and
R. R. WHITMORE, )

Respondents. )

CIVIL ACTION NO. 66-187-Civ-J

## MEMORANDUM BRIEF

Respondents, CITY OF JACKSONVILLE, CITY COUNCIL OF JACKSONVILLE, FLORIDA and CLYDE C. CANNON, pursuant to Rule 7(A) of the General Rules of the United States Court for the Middle District of Florida, file herewith their brief supporting their Motion to Dismiss, Motion to Strike, Motion for More Definite Statement and Motion to Quash, as follows:

## MOTION TO DISMISS

1. (Lack of Jurisdiction)

Petitioner seeks a Declaratory Judgment that:

A. The public hearing of December 14, 1965 and relative matters pertaining thereto are unconstitutional and unlawful.

B. A Writ of Mandamus requiring the City Council of the City of Jacksonville, Florida to hold a public hearing within thirty (30) days and during certain specified hours.

The fact that a Declaratory Judgment is sought under 28 U. S. C. §2201 does not in and of itself furnish a basis for jurisdiction of this Court. Stafford v. Superior Court, 272 F. 2d 407 (C. A. 9, 1959) cert. den. 362 U. S. 979; Lear Siegler, Inc. v. Adkins (C. A. Cal. 1964) 330 F. 2d 595; Langston v. U. S. Attorney Gen. (C. A. Pa. 1961) 293 F. 2d 316.

Petitioner, on page 2 of his Petition, alleges that this action arises under the 14th Amendment to the Constitution of the United States of America, 42 U. S. C. §1981, et seq and §2 of the Sherman Anti-Trust Act. He asserts that jurisdiction is conferred by 28 U. S. C. §1343.

An analysis of 42 U. S. C. 1981, et seq reveals that §1982, which provides:

> "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

is obviously by its terms inapplicable to the case at hand. §1983 has been held inapplicable to municipal corporations. Monroe v. Pape, 365 U. S. 167, 5 L. ed. 2d 492, 81 S. Ct. 473 (1961), Spiesel v. City of New York (D. C. N. Y.) 239 F. Supp. 106. Affirmed 342 F. 2d 800. Also as to counties, Garrison v. Bernalillo County (C. A. N. M.) 338 F. 2d 1002.

Under §1985 it has been held that an action under said section relating to conspiracy to interfere with Civil Rights does not lie against a municipal corporation. U. S. ex rel Lee v. Illinois (C. A. Ill.) 343 F. 2d 120.

As §1981 provides:

> "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other,"

it is doubtful that its provisions are applicable to any of the matters alleged by Petitioner. The jurisdiction of this Court then must depend upon the allegation by the Petitioner that this action arises under the 14th Amendment. If so, the facts alleged must bring the case within one of the four provisions of 28 U. S. C. §1343 in order to vest this Court with jurisdiction. Paragraphs 1 & 2 of §1343 confer no jurisdiction against Defendant, City of Jacksonville, by virtue of the above cited cases. Under paragraph 3 there is no allegation, except by inference, that anyone was acting under color of any State Law, statute, ordinance, etc. or that Petitioner has been deprived of any right, privilege or immunity secured by the Constitution, or by Act of Congress providing for equal rights of citizens, or that this was done by anyone acting under color of law as aforesaid. No claim has been stated to recover damages or secure equitable or other relief under Act of Congress providing for the protection of Civil Rights as set forth in paragraph 4 of §1343.

2. Failure to State a Claim

Basically there is some overlapping in this discussion as between the argument set forth under Lack of Jurisdiction and Failure to State a Claim upon which relief can be granted. In addition to any grounds set forth above under Lack of Jurisdiction, Respondents would like to point out that although Petitioner vaguely alleges Sherman Anti-Trust Act violations, no specific Act constituting any such violations are alleged, therefore no argument is being made as to this point.

irrelevant and immaterial

The Florida Courts have ruled on several occasions as to the power of municipalities in connection with the regulations of taxicabs, e. g. North Beach Yellow Cab Co. v. Village Bal Harbour (Fla. App.) 135 So. 2d 4, holding that it is within the irreversible discretion of city authorities to determine whether and to what extent taxicab service is needed. c. f. Langley v. New Deal Cab Co. (Fla. App. 1962) 138 So. 2d 789, cert. den. 155 So. 2d 550 (a case involving petitioner) holding that the Legislature of the State of Florida, by statute, had granted the City of Jacksonville exclusive authority to regulate taxicabs within the city whose primary carriage is wholly within the city and only casual or incidental operation in the adjoining surburban territory. Also Yellow Cab Co. v. Ingalls (Fla.) 104 So. 2d 844. The transportation of passengers for hire in a taxicab upon the streets of the city is not an inherent right, but a privilege which the municipality, in the exercise of its discretion, may grant or refuse. Ingalls also held that an ordinance may provide that a permit for a taxicab will not be issued unless the City Commission finds that there is a public need for it.

✓ No cause of action has been stated for declaratory relief, since Petitioner has not alleged that he is in doubt or uncertain of his rights. Luckenbach S. S. Co. v. U. S. (C. A. N. Y. 1963) 312 F. 2d 545; Muskegon Piston Ring Co. v. Olsen (C. A. Mich. 1962) 307 F. 2d 85 cert. den. 83 S. Ct. 508, 371 U. S. 592, 9 L. ed. 2d 500; Shell Oil Co. v. Frusetta (C. A. Cal. 1961) 290 F. ed 689; Official Form 18.

Writ of Mandamus has been abolished, and Petitioner has neither prayed for, nor stated grounds adequate for, relief heretofore available by mandamus. Rule 81(b).

3. Failure to Comply with Rule 8(a)(2)

Although not unaware of Black v. First Nat'l Bank (C. A. 5, 1958) 255 F. 2d 373, Respondents feel that a Petition (Complaint) of the type such as filed in this cause is an "all fours" violation of the above cited rule and that the Petition should be dismissed. Martin v. Hunt (D. C. Mass. 1961) 29 F. R. D. 14; Agnew v. Moody (C. A. 9, 1964) 330 F. 2d 868 (in both cases leave was granted to file an Amended Complaint).

4. Failure to Join Indispensable Parties

✓ The City Council cannot be sued as an entity, and, obviously, the other members of the Council, other than Clyde C. Cannon, are indispensable to any granting of relief as sought by Petitioner. Thaxton v. Vaughan (C. A. Va. 1963) 321 F. 2d 474. Join all members of City Council!

## MOTION TO STRIKE

✓ 5. (a) Rule 17(b) provides that the capacity to sue or be sued is a question to be determined by the law of the state in which the District Court is held. It is the law of Florida that only legal entities, personal or corporate may be sued in the courts of this state, e. g. Florida Medical Association, Inc. v. Spires, (Fla. App. 1963) 153 So. 2d 756. The city is a legal entity which may be sued as such; its City Council and its Public Service and Motor Transportation Committee are not.

(b) Rule 81(b), in abolishing the Writ of Mandamus provided that relief theretofore available by mandamus could be obtained by appropriate action or motion. Petitioner has neither alleged grounds sufficient for nor prayed for such relief.

(d) All the narrative matter as to alleged ordinances of the City of Jacksonville, Florida should be stricken. Ordinances must be pleaded in haec verba, and must be proven. The court does not take judicial notice of municipal ordinances. Conrad v. Jackson (Fla. 1959) 107 So. 2d 369.

(e) All of the allegations contained in the quoted portions of paragraph 7 are clearly immaterial, redundant, impertinent and scandalous, and have no relationship to the relief sought.

> (g) "A general allegation of conspiracy without a statement of the facts is an allegation of a legal conclusion and insufficient of itself to constitute a cause of action. Although detail is unnecessary, the plaintiffs must plead the facts constituting the conspiracy, its object and accomplishment," Black & Yates v. Mahogany Ass'n (C. A. 3) 129 F. 2d 227, 148 A.L.R. 841;

cited with approval in Ocala Loan Co. v. Smith (Fla. App. 1963) 155 So. 2d 711.

## MOTION TO QUASH

See remarks under paragraph 5 above under Motion to Strike.

/s/ William M. Madison
WILLIAM M. MADISON

/s/ Claude L. Mullis
CLAUDE L. MULLIS

/s/ William Lee Allen
WILLIAM LEE ALLEN

Attorneys for City of Jacksonville,
City Council of Jacksonville,
Florida, and Clyde C. Cannon
1103 City Hall
Jacksonville, Florida

I HEREBY CERTIFY that a copy hereof has been furnished William Bernard Langley, 5819 Moncrief Road, Jacksonville, Florida, by mail this 30 day of March, 1966.

/s/ William Lee Allen
Attorney

[1966, March 30]

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

| | | |
|---|---|---|
| WILLIAM BERNARD LANGLEY, | ) | |
| Petitioner, | ) | |
| vs. | ) | |
| CITY OF JACKSONVILLE, FLORIDA, CITY COUNCIL OF JACKSONVILLE, FLORIDA, | ) | |
| CLYDE C. CANNON, Chairman, Public Service and Motor Transportation Committee of Said Council, and R. R. WHITMORE, | ) | CIVIL ACTION NO. 66-187-Civ-J |
| Respondents. | ) | |

Respondents, CITY OF JACKSONVILLE, CITY COUNCIL OF JACKSONVILLE, FLORIDA, and CLYDE C. CANNON, move the Court as follows:

## MOTION TO DISMISS

1. To dismiss the action on the ground that the Court lacks jurisdiction over the subject matter because it appears on the face of the Petition, as amended, that the alleged claim does not arise under the Constitution or Laws of the United States as is alleged therein.

2. To dismiss the action on the ground that the Petition, as amended, fails to state a claim against Respondents, or either of them, upon which relief can be granted.

3. To dismiss the action on the ground that the Petition, as amended, does not comply with the requirement of Rule 8 (a)(2) that it "contain a short and plain statement of the claim showing that the pleader is entitled to relief."

4. To dismiss the action because it appears on the face of the Petition, as amended, that the members of the City Council of Jacksonville, Florida, other than Respondent Clyde C. Cannon are indispensable parties to this action, but are not joined as parties.

MOTION TO STRIKE

5. To strike from the Petition, as amended, the following allegations on the ground that they are redundant, immaterial, impertinent and scandalous:

(a) In the style, all reference to City Council of Jacksonville, Florida and its Public Service and Motor Transportation Committee, for the reason that these are not entities which are suable as such, and also all reference to R. R. Whitmore because no relief is prayed against said Whitmore.

(b) In the title, the words "AND WRIT OF MANDAMUS".

(c) All of the introductory matter on page 1 and the first half of page 2 (including the alleged violations numbered 1. through 5. at the top of page 2) and the prayer thereof.

(d) All the narrative matter as to alleged ordinances in paragraph 3. of the Petition, as amended, for the reason that ordinances must be pleaded and proved.

(e) That portion of paragraph 7 reading: "Said R. R. Whitmore and City Council have entered into a conspiracy to deprive Petitioner of his constitutional rights by preventing Petitioner, in any event, from obtaining permits.......in this manner: (1) City Council could more easily determine no need for the combined number of permits requested by R. R. Whitmore and Petitioner. (2) In the event Petitioner, in some manner, is able to prove a need for additional permits, City Council could give the permits to R. R. Whitmore, who is a white man, rather than to Petitioner who is a Negro."

(f) Paragraph 8 reading: "There are six (6) city licensed taxi companies in Jacksonville. All of these companies are white owned. There are no Negroes who hold permits to operate taxicabs in Jacksonville, Florida."

(g) All of paragraph 9 of the Petition, as amended, for the reason that the allegations of a conspiracy in said paragraph 9 fail to point out who conspired with whom, and to do what, and fail to allege facts leading to the conclusion that there has been a conspiracy and fail to allege any injury to Petitioner resulting from any such conspiracy.

(h) All of paragraph 10 of the Petition, as amended, for the reason that no facts are alleged leading to the conclusion that Petitioner has been denied any rights because of his race or because of any conspiracy to protect an existing monopoly.

(i) Paragraph 11 reading: "Petitioner would show further unto this Honorable Court that this is another incident in the systematic pattern in the South; in State Courts, State all-white juries, and local governmental agencies, to deny Negroes justice and to deprive Negroes of their constitutional rights."

## MOTION FOR MORE DEFINITE STATEMENT

6. To enter an order directing Petitioner to file a more definite statement of the following matters:

(1) When did he make the request to postpone the hearing to a later date, and a different time, made to Respondent Clyde C. Cannon, as alleged by Petitioner in the last paragraph of paragraph 5 of the Petition, as amended?

(2) a. What action and recommendation did the Committee on Public Service and Motor Transportation, of the City Council take and make on his application?

b. The action of the City Council thereon.

## MOTION TO QUASH

7. To enter an order quashing the summons, together with service thereon, issued against the City Council of Jacksonville, Florida, and dismissing the action as to said Respondent for lack of jurisdiction over same on the ground that said Council is not a legal entity, and has no capacity to sue or be sued.

/s/ William M. Madison
WILLIAM M. MADISON

/s/ Claude L. Mullis
CLAUDE L. MULLIS

/s/ William Lee Allen
WILLIAM LEE ALLEN

Attorneys for City of Jacksonville,
City Council of Jacksonville,
Florida, and Clyde C. Cannon
1103 City Hall
Jacksonville, Florida

I HEREBY CERTIFY that a copy hereof has been furnished William Bernard Langley, 5819 Moncrief Road, Jacksonville, Florida, by mail this 30 day of March, 1966.

/s/ William Lee Allen
Attorney

[1966, April 4]

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY, )

Petitioner, )

vs. )

CITY OF JACKSONVILLE, )
FLORIDA, CITY COUNCIL
OF JACKSONVILLE, FLORIDA, )

CLYDE C. CANNON, Chairman, )
Public Service and Motor
Transportation Committee )
of Said Council, and
R. R. WHITMORE, )

Respondents. )

)

CIVIL ACTION NO. 66-187-Civ-J

## OBJECTIONS TO INTERROGATORIES

Respondent, CITY OF JACKSONVILLE, FLORIDA, objects to the following interrogatories heretofore served on it by the Petitioner, by mail, on the 28th day of March, 1966, on the grounds stated:

1. Has the City of Jacksonville, Florida, by and through its City Attorney, at any time filed a brief and appeared as Amicus Curiae in the case of New Deal Cab Company v. William Bernard Langley?

On the ground that said interrogatory improperly calls for irrelevant and immaterial matter, since there are no allegations in the Petition referring in any manner to any case involving New Deal Cab Company v. William Bernard Langley. (It is assumed that Petitioner apparently here is referring to the case of New Deal Cab Company v. Langley, Fla. App. 1962, 138 So. 2d 789, cert. den., Fla. 1962, 155 So. 2d 550, since Petitioner refers to such a case in Interrogatory No. 12 propounded to Respondent, Clyde C. Cannon).

2. When and before what court did the City of Jacksonville appear in the case of New Deal v. Langley?

On the ground that said interrogatory improperly calls for irrelevant and immaterial matter upon the grounds as stated in objection to Interrogatory No. 1, and on the further grounds that it calls for facts which are a matter of public record and in the possession of Petitioner, since he was the original plaintiff in the case of New Deal Cab Company v. Langley.

3. Did the City of Jacksonville appear in an attempt to cause William Bernard Langley, hereinafter called "Petitioner", to be restrained from operating taxicabs on the streets of the City of Jacksonville in any manner?

On the ground that said interrogatory improperly calls for opinions and conclusions of Respondent; that the interrogatory, as phrased, is contentious and argumentative and improperly seeks to inquire into the motives of a governmental body.

4. Was Petitioner licensed by the State of Florida to transport passengers to any place in the State-Jacksonville included?

On the ground that said interrogatory improperly calls for conclusions of law and irrelevant and immaterial matter in that whether or not Petitioner was licensed by the State of Florida, at the time of the New Deal v. Langley litigation, has no bearing on the issues in this suit; and on the further ground that the facts are within the possession of Petitioner.

5. Was the City of Jacksonville, as Amicus Curiae, attempting to persuade the Florida Supreme Court to uphold a summary judgment ruled by the Florida Appellate Court to be invalid because of insufficient evidence?

On the ground that said interrogatory improperly calls for opinions and conclusions of Respondent; that the interrogatory, as phrased, is contentious and argumentative and improperly seeks to inquire into the motives of a governmental body.

6. Was it the position of the City of Jacksonville that in order for Petitioner's taxicabs to pass through the City, or to use the streets of Jacksonville in any manner, while transporting passengers for hire pursuant to the authority of his permit from the State of Florida, that a city permit must be obtained?

On the ground that said interrogatory improperly calls for opinions and conclusions of Respondent; that the interrogatory, as phrased, is contentious and argumentative and improperly seeks to inquire into the motives of a governmental body.

7. Did the City of Jacksonville ask the Florida Supreme Court to remand the case to the lower Court and to uphold a Circuit Court injunction which restrained Petitioner from operating taxicabs on the streets of Jacksonville in any manner?

On the ground that said interrogatory improperly calls for opinions and conclusions of Respondent; that the interrogatory, as phrased, is contentious and argumentative and improperly seeks to inquire into the motives of a governmental body.

8. Did the aforementioned Circuit Court injunction describe City permits held by New Deal Cab Company as being "in the nature of a franchise"?

On the ground that said interrogatory improperly calls for irrelevant and immaterial matter in that it calls for opinions and conclusions of law by Respondent, and Petitioner himself, since apparently the injunction was served upon him, would best know the language contained in said injunction.

9. Is a franchise, as applied to taxi operations, a form of monopoly?

On the ground that said interrogatory improperly calls for opinions and conclusions of Respondent and that it is contentious and argumentative, and, as phrased, calls for opinions and argument by Respondent.

10. In seeking to have upheld aforementioned injunction describing New Deal Cab Company's permits as being "in the nature of a franchise", was the City of Jacksonville, in effect, seeking to uphold a monopoly, so to speak, for present holders of City permits?

On the ground that said interrogatory improperly calls for opinions and conclusions of Respondent and that it is contentious and argumentative, and, as phrased, calls for opinions and argument by Respondent.

11. Give the name and address of the person or persons who authorized the City of Jacksonville to appear as Amicus Curiae in the Florida Supreme Court against Petitioner's cause.

On the ground that said interrogatory improperly calls for irrelevant and immaterial matter, and calls for a conclusion of law in that it is general knowledge to anyone in the legal profession that authorization to appear as Amicus Curiae, in the Florida Supreme Court, would have to have been granted by the Court itself.

12. Was it known that Petitioner was a Negro?

On the ground that said interrogatory calls for irrelevant and immaterial matter and is vague and unclear in that the interrogatory does not state when or by whom it was known that Petitioner was a Negro.

13. Were there other taxi companies licensed solely by the State of Florida and in operation at the time the Amicus Curiae appearance was made against Petitioner?

On the ground that said interrogatory improperly calls for irrelevant and immaterial matter and calls for investigation or compilation of data in that the list of "taxi companies licensed solely by the State of Florida", at the time stated in the interrogatory, would be maintained by the State of Florida and not by this Respondent.

14. Were the above mentioned taxi companies White owned and operated?

On the ground that said interrogatory improperly calls for irrelevant and immaterial matter and calls for investigation or compilation of data in that the list of "taxi companies licensed solely by the State of Florida", at the time stated in the interrogatory, would be maintained by the State of Florida and not by this Respondent.

15. Has the City of Jacksonville, at any time, intervened in any law-suit against a White-owned and operated taxi company licensed solely by the State?

On the ground that said interrogatory improperly calls for irrelevant and immaterial matter in that there are no allegations in the Petition that the City of Jacksonville has intervened in any law suit against Petitioner.

16. Give the number of Petitioner's Negro taxi drivers who were arrested by the City of Jacksonville during the period between July, 1948 and October 31, 1961, for supposedly "hacking without a license"--although Petitioner was licensed by the State of Florida.

On the ground that said interrogatory improperly calls for irrelevant and immaterial matter, in that however many of Petitioner's drivers were arrested, as stated in the interrogatory, would have no bearing on the facts as alleged in the Petition; that, as phrased, the interrogatory is contentious and argumentative.

17. Give the number of White taxi drivers of White companies under similar license who were arrested under the same charge, during this same period.

On the ground that said interrogatory improperly calls for irrelevant and immaterial matter, in that however many of Petitioner's drivers were arrested, as stated in the interrogatory, would have no bearing on the facts as alleged in the Petition; that, as phrased, the interrogatory is contentious and argumentative.

18. Was the public hearing of December 14, 1965 held upon proper and sufficient notice?

On the ground that said interrogatory improperly calls for conclusions of law in that whether or not proper and sufficient notice is given in any case is a matter of law.

19. Was the aforementioned public hearing sufficient whereby the City of Jacksonville could make a good and true determination of a need and necessity for additional taxi service in the interest of public convenience?

On the ground that said interrogatory improperly calls for opinions and arguments by Respondent, opinions and conclusions of law in that whether or not the hearing was sufficient, as stated in the interrogatory, is a matter of law.

20. Does the City of Jacksonville have sole authority to issue permits for taxi operation within said City?

On the ground that said interrogatory improperly calls for opinions and conclusions of law since whether or not the City has authority, as stated in the interrogatory, is a question of law.

21. In that Circuit Court, in the case of Langley v. New Deal, has construed the picking up of a passenger in unincorpored areas and discharging him within the City, "with any degree of regularity", to be an operation within the City, is the City of Jacksonville responsible for adequate taxi service for the half million people residing in Duval County?

On the ground that said interrogatory improperly calls for opinions and conclusions of law, is contentious and argumentative, and, as phrased, calls for opinions and argument by Respondent, not for disclosure of material facts.

22. Are the 290 taxicabs, presently authorized, adequate to serve over 500,000 persons in Jacksonville and Duval County?

On the ground that said interrogatory improperly calls for opinions and conclusions of law, is contentious and

[1966, April 4]

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY, )
Petitioner, )
vs. )
CITY OF JACKSONVILLE, FLORIDA, CITY COUNCIL OF JACKSONVILLE, FLORIDA, )
CLYDE C. CANNON, Chairman, Public Service and Motor Transportation Committee of Said Council, and R. R. WHITMORE, )
Respondents. )

CIVIL ACTION NO. 66-187-Civ-J

## OBJECTIONS TO INTERROGATORIES

Respondent, CLYDE C. CANNON, etc., objects to the following interrogatories heretofore served on him by the Petitioner, by mail, on the 28th day of March, 1966, on the grounds stated:

1. Upon application for permits, is the City Council of Jacksonville, Florida, hereinafter called "City Council", required by law to hold a public hearing to determine whether public welfare and convenience require the issuance of additional taxi permits?

On the ground that said interrogatory improperly calls for an opinion and conclusion of law, and the law itself is the best evidence of whether or not such public hearing is required.

2. Which is of most concern to City Council: public welfare and convenience, or the alleged loss of revenue by a very small percentage of taxi drivers, bus drivers, and hirelings?

On the ground that said interrogatory improperly calls for opinions, conclusions, matters not relevant to this action, and that it is contentious and argumentative.

3. When a local governmental agency holds a public hearing on an issue relative to public welfare and interest, is the public to be notified of such hearing?

On the ground that said interrogatory improperly calls for an opinion and conclusion of law, and the law itself is the best evidence of whether or not such public hearing is required.

4. Is a public hearing required to be advertised in the official newspaper of that City and county wherein the public will be affected?

On the ground that said interrogatory improperly calls for an opinion and conclusion of law, and the law itself is the best evidence of whether or not such public hearing is required.

5. If your answer to question number three (3) is affirmative, is City Council required to notify the public of a public hearing?

On the ground that said interrogatory improperly calls for an opinion and conclusion of law, and the law itself is the best evidence of whether or not such public hearing is required.

6. Was the public notified of the so-called public hearing of December 14, 1965?

On the ground that said interrogatory improperly is phrased so that it is contentious and argumentative.

9. Were statements made by a very small minority of taxi drivers and hirelings, alleging that if any number of additional permits were granted they would be unable to support their families, sufficient grounds for determining that no additional taxi permits should be issued?

On the ground that said interrogatory improperly calls for opinions and arguments, not for disclosure of material or relevant facts; is contentious and argumentative.

11. If your answer to question number ten (10) is affirmative, state the Councils' reason for taking into consideration the testimony of a handful of drivers, officials, and hirelings of City-licensed companies as against the petition of one thousand persons.

On the ground that said interrogatory improperly calls for opinions and arguments, not for disclosure of material or relevant facts; is contentious and argumentative.

12. In that the state courts, in the cases of Langley v. New Deal and New Deal v. Langley, have taken the position that the City of Jacksonville has sole authority to permit taxi operation within said City, and that if a passenger is picked up outside the city and discharged within the city "with any degree of regularity," a City permit is required; is the City Council not required to provide for necessary taxicab transportation consistent with the public welfare and convenience for the better than one half million residents of Jacksonville and Duval County?

On the ground that said interrogatory improperly calls for opinions and arguments, not for disclosure of material or relevant facts; is contentious and argumentative.

13. Are the 290 taxicabs presently licensed by the City adequate to serve over one half million residents of Jacksonville and Duval County properly?

On the ground that said interrogatory improperly calls for opinions, conclusions and facts not within the possession of this Defendant.

17. Would not the Councils' denial of permits to Petitioner without a true determination of need and necessity be arbitrary?

On the ground that said interrogatory improperly calls for opinions and legal conclusions.

/s/ William Lee Allen
WILLIAM LEE ALLEN
One of the Attorneys for Clyde
C. Cannon, etc.
1103 City Hall
Jacksonville, Florida 32202

I HEREBY CERTIFY that a copy hereof has been furnished William Bernard Langley, 5819 Moncrief Road, Jacksonville, Florida, by mail, this 4 day of April, 1966.

/s/ William Lee Allen
Attorney

[1966, Apr. 14]

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY, )
Petitioner, )
vs. )
CITY OF JACKSONVILLE, FLORIDA, CITY COUNCIL OF JACKSONVILLE, FLORIDA, )
CLYDE C. CANNON, Chairman, Public Service and Motor Transportation Committee of Said Council, and R. R. WHITMORE, )
Respondents. )

CIVIL ACTION NO. 66-187-Civ-J

## MEMORANDUM BRIEF

In support of their Objections to Interrogatories filed herein, Respondents City of Jacksonville and Clyde C. Cannon, file herewith their Memorandum of law.

The law is clear that interrogatories are improper which call for opinions, conclusions or contentions. 4 Moore's Federal Practice §33.17. It is also well settled that legal conclusions may not be required by interrogatories. Payer, Hewitt & Co. v. Ballanca Corp. (D. C. Del. 1960) 26 F.R.D. 219.

Interrogatories are also required to be relevant. 4 Moore's Federal Practice §33.15.

Without burdening the Court with other citations of authority, it is apparent on the face thereof that all of the interrogatories objected to on behalf of either Respondent are clearly improper.

/s/ William Lee Allen
WILLIAM LEE ALLEN
One of the Attorneys for Respondents
1103 City Hall
Jacksonville, Florida 32202

I HEREBY CERTIFY that a copy hereof has been furnished to William Bernard Langley, 5819 Moncrief Road, Jacksonville, Florida 32209, and to Robert S. Smith, Esquire of Rogers, Towers, Bailey, Jones & Gay, 1300 Florida Title Building, Jacksonville, Florida 32202, attorneys for New Deal Cab Co., by mail, this 4th day of April, 1966.

/s/ William Lee Allen
Attorney

[1966, April 4]

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

**WILLIAM BERNARD LANGLEY,** )

Petitioner, )

vs. )

**CITY OF JACKSONVILLE, FLORIDA, CITY COUNCIL OF JACKSONVILLE, FLORIDA,** )

**CLYDE C. CANNON,** Chairman, Public Service and Motor Transportation Committee of Said Council, and **R. R. WHITMORE,** )

Respondents. )

CIVIL ACTION NO. 66-187-Civ-J

## NOTICE OF HEARING

TO: William Bernard Langley
5819 Moncrief Road
Jacksonville, Florida 32209
and
Robert S. Smith, Esquire
Rogers, Towers, Bailey, Jones & Gay
1300 Florida Title Building
Jacksonville, Florida 32202
Attorneys for New Deal Cab Co.

Please be advised that the undersigned attorney has written the Honorable William McRae, Judge of the above styled Court, and has requested that the Objections to Interrogatories be set for hearing before said Court at the earliest possible date.

/s/ William Lee Allen
WILLIAM LEE ALLEN
One of the Attorneys for Respondents
1103 City Hall
Jacksonville, Florida 32202

I DO CERTIFY that a copy hereof has been furnished to William Bernard Langley, 5819 Moncrief Road, Jacksonville, Florida 32209, and to Robert S. Smith, Esquire of Rogers, Towers, Bailey, Jones & Gay, 1300 Florida Title Building, Jacksonville, Florida 32202, attorneys for New Deal Cab Co., by mail, this 4 day of April, 1966.

/s/ William Lee Allen
Attorney

[1966, April 5]

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DISTRICT

WILLIAM BERNARD LANGLEY,

Petitioner,

-vs-

CITY OF JACKSONVILLE,
FLORIDA, CITY COUNCIL
OF JACKSONVILLE, FLORIDA,

CLYDE C. CANNON, Chairman,
Public Service and Motor
Transportation Committee
of Said Council, R. R. WHITMORE, and NEW DEAL CAB
COMPANY, a FLORIDA CORPORATION,

Respondents.

CIVIL ACTION NO. 66-187-CIV-J

## REPLY MEMORANDUM BRIEF

In accordance with Rule 7 (B), General Rules of The United States District Court For The Middle District of Florida, William Bernard Langley, Petitioner in the above styled cause, files herewith his Memorandum Brief in opposition to Respondents' Motion to quash Service of Process, and says:

1. Respondent R. R. Whitmore has, as of the filing of this Memorandum, been served with a summons in the above styled cause, properly and personally.

2. Service in compliance with state law is valid to give Federal District Court personal jurisdiction. O'Shatz v. Bailey, D. C. Md. 1963, 220 F. Supp. 444.

3. Rule 1.3 (d) Florida Rules of Civil Procedure provides:

> "If there is more than one defendant, the clerk or judge shall issue as many writs of summons or other process authorized by law against the several defendants as may be directed by the plaintiff or his attorney. When any such process is returned not executed or returned improperly executed, as to a defendant, the plaintiff shall be entitled to such additional process against such defendant as may be required to effect service."

4. Service of process upon respondent S. R. Whitmore has been made in compliance with Florida law, and it appearing that there is no material issue before the Court, Petitioner prays that this Honorable Court will deny aforementioned motion of Respondent.

Dated April 5, ,1956

William Bernard Langley

William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

## CERTIFICATE OF MAILING

I hereby certify that on April 5, 1966, I served one copy of the foregoing Reply Memoradum Brief upon William Madison, Attorney for the City of Jacksonville, Florida at City Hall, by depositing one (1) copy thereof in the United States Mail, postage prepaid, in an envelope addressed to said attorney, which address is the last address of the attorney known to me.

I further certify that on April 5, 1966, I served one (1) copy of the foregoing Reply Memorandum Brief upon John Paul Howard, attorney for R. R. Whitmore, at 205 Florida Title Building, Jacksonville, Florida by depositing one copy thereof in the United States Mail, postage prepaid, in an envelope addressed to said attorney which address is the last address of the attorney known to me.

I further certify that on April 5, 1966, I served a copy of the foregoing Reply Memorandum Brief upon New Deal Cab Company at 1185 Kings Road, Jacksonville, Florida by depositing one copy thereof in the United States Mail, postage prepaid, in an envelope addressed to said New Deal Cab Company, which address is the last address of the Respondent known to me.

William Bernard Langley

William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

[1966, April 5]

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY,
Petitioner,

vs.

CITY OF JACKSONVILLE,
FLORIDA, CITY COUNCIL
OF JACKSONVILLE, FLORIDA,

CLYDE C. CANNON, Chairman,
Public Service and Motor
Transportation Committee
of Said Council, and
R. R. WHITMORE,

Respondents.

CIVIL ACTION NO. 66-187-Civ-J

ANSWERS TO INTERROGATORIES

Answer of Respondent, CLYDE C. CANNON, etc., to interrogatories served on him by Petitioner March 28, 1966.

7. Not applicable.

8. Not applicable.

10. Yes.

14. Respondent recalls someone, he does not remember who the party was, calling him late on the afternoon of December 13, and requesting that the hearing set for 10:00 o clock the following morning be postponed.

15. Yes.

16. Because it would have been impossible to have notified all interested parties that the hearing had been cancelled.

/s/ Clyde C. Cannon
CLYDE C. CANNON

Sworn to and subscribed
before me this 5th day of
April, 1966.

/s/ Neil C. Hayden
Notary Public, State of Florida
at Large

My commission expires: Mar 6, 1970

I HEREBY CERTIFY that a copy hereof has been furnished William Bernard Langley, 5819 Moncrief Road, Jacksonville, Florida, by mail, this 5 day of April, 1966.

/s/ William Lee Allen
Attorney

[1966, April 6]

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY,

Petitioner,

vs.

CIVIL ACTION NO. 66-187-Civ-J

CITY OF JACKSONVILLE, FLORIDA,
CITY COUNCIL OF JACKSONVILLE,
FLORIDA, CLYDE C. CANNON,
Chairman, Public Service and
Motor Transportation Committee
of Said Council, and R. R.
WHITMORE,

Respondents.

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## MOTION TO QUASH AND OBJECTIONS TO INTERROGATORIES

Respondent, R. R. WHITMORE, moves to quash and objects to the Interrogatories served upon him by mail to his attorney, JOHN PAUL HOWARD, on March 28, 1966, on the grounds stated:

1. Said Interrogatories were mailed to Respondent's attorney, JOHN PAUL HOWARD, on March 28, 1966.

2. Respondent was served with Summons in the within cause on March 30, 1966, as shown by the Return herein, which service of process was two (2) days after the Interrogatories were propounded and mailed on March 28, 1966.

3. Rule 33 of the Federal Rules of Civil Procedure provides that Interrogatories may be served after commencement of the action and without leave of Court, except that, if service is made by the Plaintiff within ten (10) days after such commencement, leave of Court granted with or without notice must first be obtained.

4. The Interrogatories dated March 28, 1966, were served

within ten (10) days after the commencement of this cause and without leave of Court having been first obtained.

/s/ John Paul Howard

JOHN PAUL HOWARD
205 Florida Title Building
Jacksonville, Florida
Attorney for Respondent,
R. R. Whitmore

## MEMORANDUM BRIEF IN SUPPORT OF MOTION TO QUASH AND OBJECTIONS TO INTERROGATORIES

Rule 33 of the Federal Rules of Civil Procedure provides in part as follows:

> "Any party may serve upon any adverse party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may be served after commencement of the action and without leave of court, except that, if service is made by the plaintiff within 10 days after such commencement, leave of court granted with or without notice must first be obtained."

Rule 3 of the Federal Rules of Civil Procedure provides as follows:

> "A civil action is commenced by filing a complaint with the court."

Rule 4(a) of the Federal Rules of Civil Procedure provides as follows:

> "Upon the filing of the complaint the clerk shall forthwith issue a summons and deliver it for service to the Marshal or to a person specially appointed to serve it. Upon the request of the plaintiff separate or additional summons shall issue against any defendant."

These rules when read together clearly demonstrate the intent that a defendant in a civil case has a reasonable time

(10 days) after being served with process to prepare for the receipt of interrogatories. Originally, a copy of a Summons evidencing the filing of the suit to have been on March 1, 1966, was left with Respondent's secretary on March 9, 1966, and not served as required by law. Motion to Quash was made by Respondent to such service and prior to any adjudication on said Motion to Quash, the Respondent was then served personally with the original Complaint as filed herein on March 1, 1966, by the United States Marshal on March 30, 1966. Petitioner propounded the Interrogatories objected to on March 28, 1966, or two (2) days before Respondent was served with process of this Court. Certainly a Respondent-Defendant is not required to answer interrogatories served prior to the time that the process or summons is served. In addition, the service made on Respondent on March 30, 1966, included only the original Complaint as filed on March 1, 1966, and did not include the Amended Complaint as filed by Petitioner herein dated March 21, 1966, with the result that as of this date Respondent has still never been served with the Amended Complaint as required by law.

The rules must be read in conjunction with each other and such a reading clearly indicates that the Interrogatories are premature and should be quashed. See L. G. Defelice & Son, Inc. v. Globe Indem. Co., D.C.N.Y. 1959, 23 F.R.D. 275; Netter v. Ashland Paper Mills, Inc. D.C.N.Y. 1956, 19 F.R.D. 529.

/s/ John Paul Howard
JOHN PAUL HOWARD
205 Florida Title Building
Jacksonville, Florida
Attorney for Respondent
R. R. Whitmore

I do certify that copies hereof have been furnished to William Bernard Langley, Petitioner, 5819 Moncrief Road, Jacksonville, Florida; Madison, Mullis & Allen, Attorneys for City of Jacksonville, City Council and Clyde C. Cannon, 1103 City Hall, Jacksonville, Florida; ~~Harry B. Fozzard, Special Attorney for the Council, 905 Florida Title Building, Jacksonville,~~ Florida; and Rogers, Towers, Bailey, Jones & Gay, Attorneys for New Deal Cab Company, 1300 Florida Title Building, Jacksonville, Florida, by mail, this the 6 day of April, A.D., 1966.

/s/ John Paul Howard
Attorney

THE FOLLOWING PAGES ARE THE BEST
AVAILABLE.

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DISTRICT

WILLIAM BERNARD LANGLEY,

Petitioner,

-vs-

CITY OF JACKSONVILLE, FLORIDA, CITY COUNCIL OF JACKSONVILLE, FLORIDA,

CLYDE C. CANNON, Chairman, Public Service and Motor Transportation Committee of Said Council, R. R. WHITMORE, and NEW DEAL CAB COMPANY, a FLORIDA CORPORATION,

Respondents.

CIVIL ACTION NO. 66-187-CIV-J

## REPLY MEMORANDUM BRIEF

In accordance with Rule 7 (B) of the General Rules of the United States Court for the Middle District of Florida, William Bernard Langley, Petitioner, files herewith his Reply Memorandum Brief in opposition to Motion to Dismiss, Motion to Strike, Motion for More Definite Statement, and Motion to Quash, filed by City of Jacksonville, City Council of Jacksonville, Florida and Clyde C. Cannon, Respondents, And Petitioner denies, refutes and opposes all allegations and motions of respondents.

Petitioner refutes, denies, and takes exception to any and all allegations of Respondents in their supporting Memorandum Brief. Said exceptions are listed in similiar chronological sequence, as appears in Respondents aforementioned Memorandum Brief, as follows:

## REPLY TO RESPONDENTS MOTION TO DISMISS

1. (Lack of Jurisdiction)

Respondents have presented no facts that would substantiate their allegations that this Honorable Court lacks jurisdiction in this controversy.

Respondents state that Title 28, U. S. C. section 2201 does not in and of itself furnish a basis for jurisdiction of this Court....which perhaps is true. It does, however, furnish the authority whereby Federal Court, may assume jurisdiction. Method of determining issue of jurisdiction is left to trial court. Schramm V. Oakes, C. A. N. M. 1965, 352 F. 2d 143.

Respondents attempt to disprove the fact that the action of the case at Bar arises under 42 U. S. C. 1982, which provides:

> "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by whit citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

Respondents candidly state that it is obvious by its terms that 42 U. S. C. Section 1982, does not apply to the case at hand. Petitioner denies this and says that this is a matter to be decided by this Honorable Court.

Petitioner says further that taxi permits, when acquired, are of value, and would become a type of personal property for one who holds them.

Respondents list citations relative to 42 U. S. C. Section 1983 and Section 1985. Petitioner says that reference to these sections are irrelevant and immaterial and inopportune to be introduced at this point, in that Petitioner has not claimed that action arises under these sections.

Respondents quote Title 42 U. S. C. Section 1981 which provides:

> "All persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to be no other."

Respondents candidly state that it is doubtful that its provisions apply to any of the matters alleged by Petitioner. Petitioner denies this and points to the fact that 42 U. S. C. Section 1981, provides that all persons are subject to licenses. This, of course, would be construed to mean also that all persons are provided equal opportunity to obtain licenses.

Respondents have instructed the Court that its jurisdiction must depend upon allegations by Petitioner that this action arises under the 14th Amendment to the U. S. Constitution. And if so, facts alleged must be brought under one of the four provisions of 28 U. S. C. Respondents further state that under paragraph three of said 28 U. S. C., there is no allegation and only inference that Petitioner has been deprived of any right, privilege or immunity secured by the Constitution of the United States of America.

Petitioner emphatically denies this and states that 28 U. S. C. Section 1343, paragraph three was quoted in his petition, as amended, thusly:

> "To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any act of Congress providing for equal rights of Citizens or of all persons within the jurisdiction of the United States."

Insert #1 → Petitioner would show that Federal Courts are reluctant to grant motions to dismiss for lack of jurisdiction where causes of action, superficially at least, appear to be grounded on federal law or the Constitution. Hill's Jitney Service, Inc. V. Stiltz, Inc., D. C. Del. 1965, 238 F. Supp. 881.

Petitioner would show that dismissal for reasons not going to the merits are looked upon with disfavor particularly where litigant has not been given the opportunity through use of pre-trial techniques to demonstrate right to be heard by trial court. Fidelity & Cas. Co. of New York v. Life Companies, Inc., D. C. N. Y., 1964, 36 F. R. D. 267.

Petitioner shows further that if plaintiff has asserted a federal claim, the federal court has jurisdiction of *whether or not plaintiff realized it when it was drawn* and even if the plaintiff claims the action to be based upon state law. *Table Talk Pies of Westchester v. Strauss,* D. C. N. Y. 1964, 237 F. Supp. 514.

Jurisdiction of Federal District Court is not divested by the failure of plaintiff to specifically request damages, or other relief if such is impliedly contained in its prayer for such other and further relief in premises, as to Court might seem just and proper. *Francis H. Legget & Co. v. O'Roucke,* D. C. N. Y. 1964, 237 F. Supp. 561.

2. (Failure to state a Claim)

Petitioner emphatically denies this allegation and takes exception to all of narrative material contained in paragraph two of Respondents Memorandum Brief in relation to the authority of the City of Jacksonville to issue taxi permits, in that it is irrelevant and immaterial and has no bearing upon their motion to dismiss.

Respondents allege that Petitioner had not stated a cause of action. Petitioner emphatically denies this and would show unto the Court that for the purpose of a motion to dismiss complaint for failure to allege a cause of action, the Court must assume that the allegations of the Complaint are true and must address itself solely to the legal sufficiency of their significance, *Hammonis v. Aetna Cas. & Sur. Co.,* D. C. Ohio 1965, 237 F. Supp. 96.

A similiar opinion in the case of *U. S. v. Mississippi,* Miss. 1965, 85 S. Ct. 808, 380 U. S. 128, 13 L. Ed 2d 717 held:

> "In considering correctness of ruling that complaint failed to state a claim upon which relief could be granted, allegations of complaint are to be taken as true."

Petitioner says that he made charges that he has sworn to verily believe, and has asked for a determination of his constitutional rights.

Petitioner further says that on a motion for dismissal, complaint must be viewed in light most favorable to plaintiff and the complaint should not be dismissed unless it appears to a certainty that plaintiff would not be entitled to relief under any state of facts which could be proved in support of his claim, and no matter how likely it may seem that the plaintiff would be unable to prove his case, he is entitled, on averring a claim, to an opportunity to prove it. Melo-Sonics Corp. v. Cropp., C. A. Pa. 1965, 342 F. 2d 856.

In determining the validity of a motion to dismiss for failure to state claim, each well pleaded fact must be taken as true and construed in a manner most favorable to the plaintiff. Allied Oil Workers Union v. Ethel Corp., C. A. La. 1965, 341 F. 2d 47. We find a similiar opinion in the case of Bing v. General Motors Acceptance Corp., D. C. S. C. 1965, 237 F. Supp. 911 - And in the case of Mandel v. Highway and Local Motors Freight Drivers, Dockmen and Helpers, Local Union No. 707, D. C. N. Y. 1964, 246 F. Supp. 805.

Again, we find that on motions to dismiss, generally, the allegations of the complaint are deemed to be true and liberally constructed. O'Brien v. Paddock, (D. C. N. Y. 1965), 246 F. Supp. 809.

3. (Failure to comply with Rule 8 (a) (2)).

Petitioner denies the allegation that he has not complied with Rule 8 (a) (2). Petitioner says that he has complied with the requirements of Rule 8 (a) (2) in the manner best known to him, appearing pro se. Cases should be decided upon their merits rather than upon technical deficiencies in pleadings. Lomartira v. American Auto. Ins. Co., (D. C. Conn. 1965), 245 F. Supp. 124.

We find a further application of this in the opinion in the case of Byrd v. Bates, 5 Cir., 220 F. 2d 480, 482, wherein the court said:

> "As we said in John Walker & Sons v. Tampa Cigar Co. 5 Cir., 197 F. 2d 72, 73; Rule 8 of the Federal Rules of Civil Procedure, 28 U. S. C. A., provides that a pleading shall set forth a short, plain statement of the claim showing that the pleader is entitled to relief...absent from this rule is the old requirement of common law and code pleading that the pleader set forth "facts" constituting a cause of action. It is also elementary that a complaint is not subject to dismissal unless it appears to a certainty that the plaintiff cannot possibly be entitled to relief under any set of facts which could be proved in support of its allegations. Even then, a Court ordinarily should not dismiss the Complaint except after affording every opportunity to the plaintiff to state a claim upon which relief might be granted."

Foregoing quote cited with approval in the case of Black v. First Nat'l Bank (C. A. 5. 1958) 255 F. 2d 373.

We find further that pleadings prepared by a layman should be liberally construed. Downing v. New Mexico State Supreme Court, (C. A. N. M. 1964), 339 F. 2d 435.

Rights of litigants are decided on facts placed before the Court. The function of pleadings is merely to furnish a vehicle for getting facts to court in an orderly fashion. Todd v. Bello L. Teer Co., C. A. Fla. 1962, 308 F. 2d 397.

Under these rules, the technical niceties of pleading should not be exalted, but rather the sufficiency of a complaint should be tested by whether it gives fair notice of complainant's Claim to the opposing party. Watsco, Inc. v. Henry Value Co., D. C. N. Y. 1964, 232 F. Supp. 38.

4. (Failure to join Indispensable Parties)

Respondents allege that City Council cannot be sued as an entity and in paragraph five (5) of their brief attempt to skillfully use Rule 17 (b), Federal Rules of Civil Procedure, to show that who may be sued and who may not be sued is determined by the laws of the state in which Federal District Court is held.

Petitioner would show that Rule 17 (b) (1), Federal Rules of Civil Procedure provides the authority whereby City Council may be sued. Exception number one (1) of said Rule 17 (b) provides:

> "Except that a partnership or other unincorporated association, which has no capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States."

City Council comes under the term unincorporated association, and as such has no special immunity from the right to sue or to be sued in Federal District Court.

## REPLY TO RESPONDENTS MOTION TO STRIKE

5. Reference is made to paragraph four (4) above in the matter of the ability of City Council to sue or to be sued.

Petitioner says that motions to strike are not favored by federal court, but they are useful and appropriate where parties disagree only on legal implications to be drawn from uncontroverted facts or where questions of law are involved. Commonwealth Edison Co. v. Allis - Chalmers Mfg. Co., D. C. Ill. 1965, 245 F. Supp. 889.

Petitioner takes exception to statement by Respondents that all narrative matter as to ordinances should be stricken. Ordinances must be pleaded in haec verba if the Court is to take judicial notice of said ordinances. Conrad v. Jackson (Fla. 1959) 107 So. 2d. 369. However, in the above cited case, the reference to ordinances was not stricken. The court simply did not rule on the alleged violations in that they did not appear in haec verba. Petitioner feels that he has the right, in any event, to file motion for leave of Court to insert relevant sections of said ordinances in haec verba.

Petitioner denies that his allegations contained in the quoted portions of his paragraph 7 are clearly immaterial, redundant, impertinent and scandalous, and have no relationship to the relief sought. Petitioner says that his allegations are true, as he verily believes.

Motions to strike portions of complaint as immaterial, impertinent and scandalous are addressed to the discretion of Court and are not favored. Hoffman Motors Corp. v. Alfa Romeo, S. P. A. D. C. N. Y. 1965, 244 F. Supp. 70.

## REPLY TO RESPONDENTS MOTION FOR MORE DEFINITE STATEMENT

Although Respondents do not support this motion in their brief, Petitioner takes exception to this motion in his Reply Memorandum Brief.

It has been ruled that defendants' motion for more definite statement would be denied where pleading was not so vague or ambiguous as to prevent defendants from being able to reasonably frame answer. Hoffman Motors Corp. v. Alfa Romeo., (S. P. A. D. C. N. Y. 1965), 244 F. Supp. 70.

~~It has also been held~~ that a motion for more definite statement is not intended to be used as a discovery procedure prior to issues being joined. Carolina Scenic Stages, Inc. v. Greyhound Corp., (D. C. S. C. 1965), 38 F. R. D. 313.

## ~~REPLY TO RESPONDENTS MOTION TO QUASH~~

Reference is made to paragraph four (4) above in the matter of the ability of City Council to sue or to be sued.

Dated April 7, 1966

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

# CERTIFICATE OF MAILING

I hereby certify that on April 7, 1966, I served one copy of the foregoing Reply Memorandum Brief upon William Madison, Attorney for the City of Jacksonville, Florida at City Hall, by depositing one (1) copy thereof in the United States Mail, postage prepaid, in an envelope addressed to said attorney, which address is the last address of the attorney known to me.

I further certify that on April 7, 1966, I served one (1) copy of the foregoing Reply Memoradum Brief upon John Paul Howard, attorney for R. R. Whitmore, at 205 Florida Title Building, Jacksonville, Florida by depositing one copy thereof in the United States Mail, postage prepaid, in an envelope addressed to said attorney which address is the last address of the attorney known to me.

I further certify that on April 7, 1966, I served a copy of the foregoing Reply Memorandum Brief upon New Deal Cab Company at 1185 Kings Road, Jacksonville, Florida by depositing one copy thereof in the United States Mail postage prepaid, in an envelope addressed to said New Deal Cab Company, which address is the last address of the Respondent known to me.

William Bernard Langley

William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

[1966, April 13]

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY, )
)
Petitioner, )
)
-vs- )
) CIVIL ACTION NO. 66-187-CIV-J
CITY OF JACKSONVILLE, )
FLORIDA, CITY COUNCIL )
OF JACKSONVILLE, FLORIDA, et al.)
)
)
Respondents. )
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## REPLY MEMORANDUM BRIEF

Pursuant to the provisions of Rule 7 (B), General Rules of the United States District Court for the Middle District of Florida, William Bernard Langley, Petitioner in the above styled cause, files herewith his Memorandum Brief in Opposition To Motion To Quash and Objections to Interrogatories, filed by R. R. Whitmore, Respondent. And Petitioner refutes, opposes and takes exception to allegations set forth in the motion by Respondent.

Petitioner refutes, denies, and takes exception to allegations set forth in Respondent's aforementioned motion and in his Memorandum Brief as follows:

1. In paragraph four (4), Respondent's motion, it is stated:

> "The interrogatories dated March 28, 1966, were served within ten (10) days after the commencement of this cause and without leave of Court having been first obtained."

Petitioner denies the foregoing statement by Respondent and states that the action commenced, in accordance with Rule 3, Federal Rules of Civil Procedure, on March 1, 1966.

Rule 3, Federal Rules of Civil Procedure, provides:

> "A civil action is commenced by filing a complaint with the Court."

A complaint in the above styled cause, was filed with the Court March 1, 1966. Interrogatories to Respondent R. R. Whitmore were served, on March 28, 1966. It appears to Petitioner that said interrogatories technically were served twenty-seven (27) days after commencement of action.

2. In his Memorandum Brief, Respondent quotes Rule 3 and 4(a) of the Federal Rules of Civil Procedure... which are self-explanatory. Said Rule 3 defines commencement of action. Said Rule 4(a) outlines the duties of the Clerk of the Court to issue a summons and to deliver said summons to the Marshal or specially appointed person to serve said summons. Petitioner says emphatically that nowhere in the aforementioned Rules 3 or 4(a) through 4(i) are provisions made for the commencement of action to begin with the serving of a process upon a party.

Where federal matter or cause of action is involved, action is deemed commenced at time complaint is filed. Newberg v American Dryer Corp., (D. C. Pa. 1961), 195F. Supp. 345.

In another application it is held that an action is commenced by filing a complaint with the Court. U.S.V. Fireman's Fund Ins. Co., (D. C. Idaho 1961), 195F. Supp. 317.

Jurisdiction over a defendant is not essential to commencement of an action. Engelhardt v Bell & Howell Co., (C. A. Mo. 1962) 229 F. 2d. 480.

In accordance with Rule 4(a), Federal Rules of Civil Procedure, and Rule 1.3(d) Florida Rules of Civil Procedure, an additional summons was served upon Respondent and service of process was made March 30, 1966.

It is noted that interrogatories were served upon Respondent R. R. Whitmore on March 28, 1966, and in accordance with Rule 33, Federal Rules of Civil Procedure, said Respondent had fifteen days from date of service to reply to said interrogatories. It appears to Petitioner that Respondent Whitmore had recourse to file motion for extension of time in which to file answers to interrogatories, if he felt it necessary to do so.

It appears further to Petitioner that a motion to quash and objections to interrogatories filed under one title is an improper motion. Rule 33, Federal Rules of Civil Procedure, provide that within ten (10) days after service of interrogatories a party objecting to interrogatories may serve written objections thereto together with a notice of hearing the objections at the earliest practicable time. Respondent R. R. Whitmore has failed to follow the provisions of Rule 33, Federal Rules of Civil Procedure.

Respondent, in his Memorandum Brief, alleges that as of the date of the filing of his memorandum he has never been served with the Amended Complaint as required by law.

Petitioner denies the foregoing allegation and says that Respondent R. R. Whitmore was served a copy of aforementioned Amended Complaint by mail, at 2839 St. Johns Avenue, Jacksonville, Florida, on March 21, 1966.

Petitioner would show unto the Court that Rule 5(a), Federal Rules of Civil Procedure, provide that every pleading subsequent to the original shall be served upon each of the parties. Rule 5(b), Federal Rules of Civil Procedure provide that service by mail is complete upon mailing.

Respondent alleges that aforementioned Rules 3 and 4(a) if read in conjunction with each other would clearly indicate that said interrogatories are premature and should be quashed.

Petitioner denies the foregoing allegation and says that aforementioned Rules 3 and 4(a) when read in conjunction clearly indicate that Respondent has evidenced no grounds for a motion to quash interrogatories.

Rule 3, Federal Rules of Civil Procedure clearly indicates that interrogatories to Respondent R. R. Whitmore were timely filed, in that said interrogatories were filed twenty-seven (27) days after commencement of action as defined by aforementioned Rule 3.

Rule 4(a), Federal Rules of Civil Procedure points to the fact that Petitioner has followed the rules as applies to the issuing of a summons to the U. S. Marshal for service.

Rule 33, Federal Rules of Civil Procedure has been strictly complied with by Petitioner in that service of Interrogatories to Respondent was not made within ten (10) days of the commencement of action as defined in aforementioned Rule 3.

It therefore appears to be quite apparent that Respondent R. R. Whitmore has stated no facts or circumstances that would warrant quashing of interrogatories and that Respondent's Motion To Quash and Objections To Interrogatories should be denied.

William Bernard Langley

William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

## CERTIFICATE OF MAILING

I hereby certify that on April 13 ,1966, I served by mail, one copy of the foregoing Reply Memorandum Brief upon William M. Madison, Attorney for the City of Jacksonville, Florida and City Council of Jacksonville, Florida, at City Hall, Jacksonville, Florida, upon John Paul Howard, Attorney for R. R. Whitmore, at 205 Florida Title Building, Jacksonville, Florida and upon New Deal Cab Company, 1185 Kings Road, Jacksonville, Florida.

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

[1966, April 13]

# UNITED STATES DISTRICT COURT FOR
# THE MIDDLE DISTRICT OF FLORIDA
# JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY, )
Petitioner, )
-vs- )
) CIVIL ACTION NO. 66-187-CIV-J
CITY OF JACKSONVILLE, )
FLORIDA, ~~CITY COUNCIL~~ )
~~OF JACKSONVILLE, FLORIDA~~, et al. )
Respondents. )

## MOTION FOR LEAVE OF COURT TO AMEND COMPLAINT

Pursuant to the provisions of Rule 15 (a), Federal Rules of Civil Procedure, William Bernard Langley, Petitioner in the above styled cause, moves this Honorable Court for leave to amend his complaint as follows:

To insert, in haec verba, relevant sections of the Ordinance Code of the City of Jacksonville, Florida, as adopted February 9, 1965, and effective March 21, 1965, in that courts do not take judicial notice of municipal ordinances.

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

## MEMORANDUM BRIEF

Pursuant to the provisions of Rule 7 (A), General Rules of the United States District Court for the Middle District of Florida, William Bernard Langley, Petitioner in the above styled cause, files herewith his Memorandum ~~Brief~~

in support of his Motion For Leave Of Court To Amend Complaint, as follows:

1. It is held that the Court does not take judicial notice of municipal ordinances. In order for a ruling on alleged violations of municipal ordinances and on matters pertaining thereto, said ordinances must be pleaded in haec verba. Conrad v. Jackson. (Fla. 1959) 107 So. 2d 369.

2. Petitioner says that a view of the procedure provided for by certain relevant portions of the Ordinance Code of the City of Jacksonville, Florida must be taken in order for a determination of the issues involved in Petitioner's claim.

Petitioner says further that it has been held that federal rules respecting amendments to pleadings should be given a liberal construction so that cases are decided on the merits rather than on bare pleadings. Fuhrer v Furher. (C. A. Ind. 1961) 292F 2d. 140.

It is the policy of federal law to allow amendments freely to serve the ends of justice. Flaherty v United Engineers and Construction, Inc., (D. C. Pa. 1961) 213 Supp. 835.

William Bernard Langley

William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

## CERTIFICATE OF MAILING

I hereby certify that on April 13 , 1966, I served by mail one copy of the foregoing Motion For Leave of Court To Amend Complaint and supporting Memorandum Brief upon William M. Madison, Attorney for the City of Jacksonville, Florida and City Council of Jacksonville, Florida, and Clyde C. Cannon, at City Hall, Jacksonville, Florida, upon John Paul Howard, Attorney for R. R. Whitmore, at 205 Florida Title Building, Jacksonville, Florida and upon New Deal Cab Company, 1185 Kings Road, Jacksonville, Florida.

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

[1966, April 15]

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY,

Petitioner,

-vs-

NO. 66-187-Civ-J

CITY OF JACKSONVILLE, FLORIDA,
CITY COUNCIL OF JACKSONVILLE,
FLORIDA, CLYDE C. CANNON,
Chairman, Public Service and
Motor Transportation Committee
of Said Council, R. R. WHITMORE, and
NEW DEAL CAB COMPANY,
a Florida corporation,

Respondents.

## MOTION TO DISMISS

Respondent, New Deal Cab Company, a Florida corporation, by its undersigned attorneys, moves the Court to dismiss the above entitled action for the following reasons:

1. The Amended Complaint fails to state a claim against this Respondent upon which relief can be granted.

2. No relief is prayed for against this Respondent in said Amended Complaint.

3. It does not appear from said Amended Complaint that there is a case or controversy between Petitioner and this Respondent.

4. It appears on the face of the Amended Complaint that federal jurisdiction over the subject matter is lacking, (1) no diversity of

Citizenship being alleged, (2) no jurisdictional amount being set forth and (3) no facts having been stated indicating federal jurisdiction of the action. The Federal Statute cited, Sec. 2201, Title 28, U.S.C., the Declaratory Judgments Act, does not furnish a basis for federal jurisdiction.

## MOTION TO STRIKE

Respondent, New Deal Cab Company, a Florida corporation, by its undersigned attorneys, moves the Court that an Order be entered requiring the Petitioner to strike out the following portions of the Amended Complaint, for the respective reasons hereinafter stated:

1. In the title of the Amended Complaint, the words "AND WRIT OF MANDAMUS" for the reason that relief by writ of mandamus has been abolished.

2. All of paragraph 1. of the Amended Complaint to the effect that Sec. 2201 of Title 28 U.S.C. confers jurisdiction on this Court, the same being a legal conclusion which is incorrect as a matter of law, it being well settled that said Statute, the Declaratory Judgments Act, does not furnish a basis for federal jurisdiction, and consequently such paragraph is irrelevant and impertinent.

3. All that part of paragraph 2. of the Amended Complaint which names New Deal Cab Company, a Florida corporation, as a Respondent for the reason that no relief is prayed against said corporation, and consequently that part of said paragraph is impertinent.

4. All of paragraph 1. (second series) of the Amended Complaint concerning Petitioner's constitutional rights which have allegedly been

denied him, the purported details thereof contained in sub-paragraphs (1), (2) and (3) of said paragraph 1. (second series) being insufficient to lead to the conclusion that Petitioner has been denied any of his constitutional rights, and consequently all of said paragraph 1. (second series), and said sub-paragraphs (1), (2), and (3) thereof, are immaterial and scandalous.

5. All of paragraph 2. (second series) of the Amended Complaint concerning this Respondent's alleged motive, on its own behalf and on the behalf of other city licensed taxicab companies, to (1) maintain a monopoly, (2) prevent an in-good-faith public hearing, (3) deny Petitioner taxi permits and (4) deny the benefits of free enterprise to Petitioner, the allegations in said paragraph 2. (second series) being irrelevant, immaterial, impertinent and scandalous absent any allegation of unlawful acts on the part of this Respondent, because (a) even if this Respondent's business is a monopoly as alleged, it is a lawful monopoly, being a regulated public service business operating under a permit in the nature of a certificate of public convenience and necessity from lawful authority, (b) this Respondent has no power to prevent an in-good-faith or any other kind of public hearing, and even if it did have such power, it is not unlawful for this Respondent to discourage the holding of public hearings, (c) this Respondent has no power to deny Petitioner or anyone else taxi permits, and even if it did have such power, it is not unlawful to deny taxicab permits, neither Petitioner nor anyone else having any constitutional right, privilege or immunity to use the public streets to carry on a taxicab business nor to be granted a permit so to do, and (d) this Respondent has no power to deny Petitioner the benefits of free enterprise.

# MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AND MOTION TO STRIKE

Under Sec. 2201, Title 28, the Declaratory Judgments statute, it must appear that there is an "actual controversy" or the Court will not assume jurisdiction. The statute itself so provides. See. e. g. Fireman's Fund Ins. Co. v. Dunlap, 317 F. 2d 443 (C. A. 4, 1963).

Here the Amended Complaint states no claim against, and prays for no relief against New Deal Cab Company. Thus it has not been made to appear that there exists, to be resolved, an actual controversy between Petitioner and New Deal Cab Company.

In addition, and contrary to Petitioner's contentions, the fact that a declaratory judgment is sought under the Federal Declaratory Judgment Act does not furnish a basis for federal jurisdiction. Stafford v. Superior Court, 272 F. 2d 407 (C. A. 9, 1959) cert. den. 362 U. S. 979. Powers v. U. S., 218 F. 2d 828 (C. A. 7, 1955).

The statement that bribes have been offered does not serve as a basis of a claim in favor of Petitioner against New Deal Cab Company, federal or otherwise. There is no civil action for "bribery." Bribery is a statutory offense, punishable as such, on information or after indictment, there being no common law crime of bribery. Coleman v. State, 132 Fla. 845, 182 So. 627 (1938).

And no crime of bribery is committed unless the money or other item of value is offered or paid to a public official, and received by him for the purpose of influencing the recipient's official acts as such public official. *Richards v. State,* 144 Fla. 177, 197 So. 772 (1940) cert dismd. 312 U.S. 662. The indictment or information must state the official character of the recipient and allege the defendant's knowledge of the official character of the person bribed. *Colson v. State.* 71 Fla. 267, 71 So. 277 (1916).

Here, not only is there no mention of any official character on the part of the "persons" alleged to have received money, but they are not even identified. All that appears from the allegations of the Amended Complaint is that New Deal Cab Company may have paid "money or monetary credits" to a person or persons unknown, as gifts or for services rendered. Even if true, these allegations show no cause of action in Petitioner, federal or state.

And as shown in the Motion to Strike, Petitioner has no cause of action, federal or otherwise, against New Deal Cab Company, a franchised ? public service company, even if the latter has attempted to maintain a monopoly, and endeavored to prevent public hearings. Nor has New Deal Cab Company any power to deny Petitioner taxi permits. All New Deal can do is urge the City Councilmen not to issue additional taxi permits, and it may lawfully so urge without being accountable to Petitioner. And New Deal obviously has no power whatever to deny Petitioner "the benefits of free enterprise."

As for the allegations in the Amended Complaint suggesting that New Deal Cab Company has "conspired" (*with whom* is not stated) to deprive Petitioner of his constitutional rights to (1) Due Process of Law, (2) Equal Protection of the Law, (3) Due Process in Civil Proceedings and also his rights under, (4) Title 42, U.S.C. and (5) the Sherman Anti-Trust Act, such vague allegations do not show a case of federal jurisdiction. Petitioner states no facts whatsoever (except the mis-named charge of "bribery" which has already been discussed). To state a case showing federal jurisdiction for alleged deprivation of federal rights, the plaintiff must allege "highly specific facts."

In e.g. the very late case of Kregger v. Posner, 248 F. Supp. 804 (D.C., E.D. Mich., S.D., 1966) the Court stated (citing cases):

> "It is not sufficient to state conclusionary allegations without support in the facts alleged."

ROGERS, TOWERS, BAILEY, JONES & GAY

J. Edwin Gay

Florida Title Building
Jacksonville, Florida 32202
Attorneys for Respondent,
New Deal Cab Company

I DO CERTIFY that copies hereof have been furnished to William Bernard Langley, Petitioner, 5819 Moncrief Road, Jacksonville, Florida; Madison, Mullis & Allen, Attorneys for City of Jacksonville, City Council and Clyde C. Cannon, 1103 City Hall, Jacksonville, Florida; Harry B. Fozzard, Special Attorney for the Council, 905 Florida Title Building, Jacksonville, Florida; and John Paul Howard, Attorney for R. R. Whitmore, 205 Florida Title Building, Jacksonville, Florida, by mail, this the 15 day of April, 1966.

J. Edwin Gay

Attorney

[1966, April 15]

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY,

Petitioner,

-vs- NO. 66-187-Civ-J

CITY OF JACKSONVILLE, FLORIDA,
CITY COUNCIL OF JACKSONVILLE,
FLORIDA, CLYDE C. CANNON,
Chairman, Public Service and
Motor Transportation Committee
of Said Council, R. R. WHITMORE, and
NEW DEAL CAB COMPANY,
a Florida corporation,

Respondents.

## REQUEST FOR ORAL ARGUMENT

Respondent, New Deal Cab Company, by its undersigned attorneys, requests that it be allowed to argue orally its Motion to Dismiss and Motion to Strike, estimating that the time required for such oral argument will be one-half hour, for sake of clarification.

ROGERS, TOWERS, BAILEY, JONES & GAY

J Edwin Gay

Florida Title Building
Jacksonville, Florida 32202
Attorneys for Respondent,
New Deal Cab Company

I DO CERTIFY that copies hereof have been furnished to William Bernard Langley, Petitioner, 5819 Moncrief Road, Jacksonville, Florida; Madison, Mullis & Allen, Attorneys for City of Jacksonville, City

Council and Clyde C. Cannon, 1103 City Hall, Jacksonville, Florida; Harry B. Fozzard, Special Attorney for the Council, 905 Florida Title Building, Jacksonville, Florida; and John Paul Howard, Attorney for R. R. Whitmore, 205 Florida Title Building, Jacksonville, Florida, by mail, this the 15 day of April, 1966.

J Edwin Gay

Attorney

[1966, April 18]

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY,

Petitioner,

vs. CIVIL ACTION NO.

R. R. WHITMORE, et al, 66-187-Civ-J

Respondents.

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## MOTION TO DISMISS

COMES NOW the Respondent, R. R. WHITMORE, by his undersigned attorney, and moves this Honorable Court to dismiss the Petition for Declaratory Judgment and Writ of Mandamus and all Amendments thereto filed herein and served upon this Respondent on March 30, 1966, on the following grounds:

1. It fails to allege a cause of action which is enforceable within the jurisdiction of this Court; fails to state a cause of action; fails to allege any facts for showing Respodnent is a necessary and indispensable party to these proceedings; fails to allege any need to have any right of Respondent determined by this court; fails to allege any basis for any relief against this Respondent; and fails to pray for any relief against this Respondnet.

2. Paragraph 7 of the Petition fails to allege any facts sufficient to require the Respondent to plead or appear as a party to these proceedings and alleges nothing more than Respondent may be called as a witness if this matter proceeds to a determination on its merits.

## MOTION TO STRIKE

COMES NOW the Respondent and moves this Honorable Court

Paragraph 7 of the Petition, this being the only Paragraph in which this Respondent is mentioned in the entire Petition, on the grounds that said Paragraph 7 fails to allege any facts sufficient to state a cause of action for any relief against this Respondent in this Court or any Court and fails to allege any jurisdictional requirements necessary to maintain any action in this Federal District Court; that relief by writ of mandamus has been abolished; that the Declaratory Judgment Act does not form a basis of jurisdiction; that no relief is prayed for against this Respondent; and that no matter what relief the petitioner may be entitled to have entered in this Court, Respondent can have nothing to do with the giving or the refusal to give such relief and Respondent would have just as much right to apply to any new proceedings of the City Council for taxi permits as the petitioner or any other person.

## MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AND MOTION TO STRIKE

Respondent, R. R. WHITMORE, has carefully considered each of the Briefs filed by each of the several Respondents in this cause showing the lack of jurisdiction of this Court over the subject matter of this controversey, the respondent and this cause and Respondent is unable to add to said briefs and relies in support of these motions upon the authorities therein set forth.

John Paul Howard

JOHN PAUL HOWARD
ATTORNEY FOR R. R. WHITMORE, RESPONDENT
205 Florida Title Building
Jacksonville, Florida

I DO CERTIFY thatcopies hereof have been furnished by mail this the 18th day ofApril, A. D. 1966, to William Bernard Langley, Petitioner, 5819 Moncrief Road, Jacksonville, Florida; Madison, Mullis and Allen, Attorneys for City of Jacksonville, City Council and Clyde C. Cannon, 1103 City Hall, Jacksonville, Florida; Harry B. Fozzard, Special Attorney for the Council, 905 Florida Title Building, Jacksonville, Florida, and Rogers, Towers, Bailey, Jones and Gay, Attorneys for New Deal Cab Company, Florida Title Building, Jacksonville, Florida.

John Paul Howard

[1966, April 18]

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY, )
Petitioner, )
-vs- )
CITY OF JACKSONVILLE, FLORIDA, CITY COUNCIL OF JACKSONVILLE, FLORIDA, et al. ) CIVIL ACTION NO. 66-187-CIV-J
Respondents. )

## INTERROGATORIES TO RESPONDENT

TO: MARION F. MARVIN, AGENT for
NEW DEAL CAB COMPANY, a
FLORIDA CORPORATION,
1185 Kings Road
JACKSONVILLE, FLORIDA

In accordance with Rule 33, Federal Rules of Civil Procedure, you are required within 15 days of service hereof, to answer separately, fully, in writing, and under oath the following interrogatories:

1. Did you notify, or cause to be notified, any taxi-cab drivers for New Deal and/or Lincoln Cab Company of a public hearing to be held December 14, 1965, in the Jacksonville City Council Chambers?

2. If your answer to question number one (1) is affirmative, were all of the New Deal-Lincoln drivers notified or were certain drivers notified?

3. If your answer to question number one (1) is affirmative, was a written announcement posted so that all drivers could read the notice of public hearing?

4. If your answer to question number three (3) is negative, state why this was not done.

5. Were drivers notified of the public hearing orally?

6. If your answer to question number five (5) is

affirmative, were drivers notified of the public hearing orally in groups or individually?

7. If drivers were notified of the public hearing orally, in groups, were they called into the company office for this purpose?

8. If drivers were notified orally and individually, of the aforementioned public hearing, were they notified individually in the company office?

9. Were drivers notified by you, personally, of the public hearing of December 14, 1965?

10. If your answer to question number nine (9) is negative, give the name and address of the person or persons authorized by you to notify drivers of said public hearing.

11. Were any driver or drivers offered money or credit to be applied toward their car rental fee, or running time, to appear at the aforementioned public hearing?

12. If your answer to question number eleven (11) is affirmative, were any of these drivers who were offered or promised money or monetary credit toward car rental fees drivers assigned to the day shift on the date of the public hearing of December 14, 1965?

13. If your answer to question number eleven (11) is affirmative, were any of these aforementioned drivers assigned to the night shift on the date of said hearing?

14. Did you pay, or cause to be paid, money to any driver or drivers who appeared at the public hearing of December 14, 1965?

15. If your answer to question number fourteen (14) is affirmative, did you pay, or cause to be paid money to any driver or drivers assigned to the night shift on the date of said hearing, who appeared at said public hearing of December 14, 1965?

16. Did you credit, or cause to be credited, monetary credit toward the car rental fee or running time of any

driver or drivers who appeared at the aforementioned public hearing?

17. If your answer to question number sixteen (16) is affirmative, did you credit, or cause to be credited, monetary credit toward the said car rental fee or running time of any driver or drivers assigned to the night shift on the date of said hearing, who appeared at said public hearing of December 14, 1965?

18. If your answer to question number fourteen (14) is affirmative, give the name and address, amount of money paid to each driver and indicate whether such driver was assigned to the day shift or night shift for drivers on the date of said hearing.

19. If your answer to question number sixteen (16) is affirmative, give the name and address, amount credited toward the car rental fee for each driver and indicate whether such driver was assigned to the day shift or night shift on the date of said hearing.

20. If your answer to question number fourteen (14) is affirmative, on what date or dates were the payments, as indicated in question number fourteen (14), made?

21. If your answer to question number sixteen (16) is affirmative, on what date or dates were the credits, as indicated in question number sixteen (16) given?

22. If your answer to question number fourteen (14) is affirmative, did you personally make payments of money, as indicated in question number fourteen (14)?

23. If your answer to question number sixteen is affirmative, did you, personally, cause the credits, as indicated in question number sixteen, (16) to be given?

24. If your answer to question number twenty-two (22) is negative, give the name and address of the person or persons authorized by you to make such payments as indicated in ques-

tion number fourteen (14).

25. If your answer to question number twenty-three (23) is negative, give the name and address of the person or persons authorized by you to give such credit as indicated in question number sixteen (16).

26. If your answer to question number fourteen (14) is affirmative, at any time prior to, on the date of, or subsequent to the public hearing of December 14, 1965, were there records, vouchers, on ledgers kept by the company which would show the payment of said monies, as indicated in question number fourteen (14)?

27. If your answer to question number sixteen (16) is affirmative, at anytime prior to, on the date of, or subsequent to the aforementioned public hearing, were there records, vouchers, or ledgers kept by the company which would show the giving of said credits, as indicated in question number sixteen (16)?

28. If your answer to question number twenty-six (26) is affirmative, are such records, as indicated in question number twenty-six (26), on hand and intact?

29. If your answer to question number twenty-seven (27) is affirmative, are such records, as indicated in question number twenty-seven (27), on hand and intact?

30. If your answer to question number twenty-eight (28) is negative, what disposition has been made of these aforementioned records?

31. If your answer to question number twenty-nine (29) is negative, what disposition has been made of these aforementioned records?

32. If your answer to question number nine (9) is affirmative, was notice of said public hearing given to drivers by additional persons who were authorized by you to do so? If

so, give name and address of such person or persons.

33. Give the name and address of allpersons known to you to have knowledge of one or more facts or circumstances relevant to this controversy.

William Bernard Langley

William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

## CERTIFICATE OF MAILING

I hereby certify that on April 18, 1966, I served by mail one copy of the foregoing Interrogatories To Respondent upon William M. Madison, Attorney for the City of Jacksonville, Florida and City Council of Jacksonville, Florida, at City Hall, Jacksonville, Florida, upon John Paul Howard, Attorney for R. R. Whitmore, at 205 Florida Title Building, Jacksonville, Florida and upon New Deal Cab Company, 1185 Kings Road, Jacksonville, Florida.

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

[1966, May 12]

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY,

Petitioner,

-vs- NO. 66-187-Civ-J

CITY OF JACKSONVILLE, FLORIDA,
CITY COUNCIL OF JACKSONVILLE,
FLORIDA, CLYDE C. CANNON,
Chairman, Public Service and
Motor Transportation Committee
of Said Council, R. R. Whitmore, and
NEW DEAL CAB COMPANY,
a Florida Corporation,

Respondents.

## REPLY MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS AND MOTION TO STRIKE

Pursuant to the provisions of Rule 7 (B), General Rules of the United States District for the Middle District of Florida, William Bernard Langley, Petitioner, files herewith his Reply Memorandum In Opposition To Motion To Dismiss and Motion To Strike, filed by Respondent R. R. Whitmore; and Petitioner refutes, opposes, and otherwise takes exception to any and all allegations, contentions, and conclusions of Respondent Whitmore. Petitioner further takes exception to any and all contentions of said Respondent in his supporting memorandum, and says:

1. Petitioner has alleged a conspiracy, of which Respondent is a party thereto, to deprive Petitioner of his constitutional rights; and if proved, relief is enforceable within the jurisdiction of this Honorable Court.

Petitioner has right to have a determination made of violations of his federal rights if he has a belief that they are violated, and an actual controversy exists.

Respondent Whitmore has been named as a party defendant in the above styled action and is joined with other party defendants; and common relief is prayed for against one and all.

2. Petitioner *has* alleged facts sufficient to require Respondent to plead. Whether facts are proved is to be determined through pre-trial techniques.

Dismissed for reasons not going to the merits are looked upon with disfavor particularly where litigant has not been afforded an opportunity throught use of pre-trial techniques to demonstrate right to be heard by trial court. *Fidelity & Cas. Co. of New York v. Life Companies, Inc.,* (D. C., N. Y., 1964) 36 F. R. D. 267.

3. In Respondents' Motion to strike, it is concluded that Petitioner has not alleged any jurisdictional requirements necessary to maintain any action in this Court.

Petitioner takes exception to this conclusion and says that if a plaintiff has asserted a federal claim, the federal court has jurisdiction of it whether or not plaintiff himself realized it when it was drawn. *Table Talk Pies of Westchester v. Strauss, (D. C. N. Y. 1964) 237 F. Supp. 514.*

It is further observed that federal courts are reluctant to grant motions to dismiss for lack of jurisdiction where causes of action, superficially at least, appear to be grounded on federal law or the Constitution. *Hill's Jitney Service, Inc. v. Stiltz, Inc.* (D. C. Del. 1965) 238 F. Supp. 881.

4. Respondent contends and concludes that Writ of Mandamus has been abolished and infers thereby that it cannot be used as a method of relief. Respondent further contends that said Respondent would have just as much right

as Petitioner or anyone else, to apply to any new proceedings of City Council for taxi permits.

Federal District Court has power to issue orders in the nature of mandamus only where it is done as an ancillary proceeding in aid of jurisdiction acquired on other grounds, and has no general original powers to issue such orders where they are the only relief sought. Newarks Morning Ledger Co. v. Republican Co., (D. C. Mass. 1960) 188 F. Supp. 813.

It is obvious that the applications of the foregoing citations are directly in point with the instant cause. Petitioner has prayed for Writ of Mandamus as an ancillary proceeding following his request for declaratory judgement. It is evident, upon the face of it, that Respondent Whitmore has no meritorious grounds for a motion to strike the words "And Writ of Mandamus."

5. It appears to Petitioner that Respondent R. R. Whitmore cannot rely upon Citations and points of law contained in the memorandums and briefs of other party defendants in this cause in that one cannot with any degree of definiteness determine which citation or which or what point of law Respondent Whitmore wishes to use in support of which or what contentions or conclusions said Respondent sets forth in his motions.

It appears further that although all parties are joined, they are not represented by common counsel, and that the burden is upon Respondent Whitmore to support his own motions as required by Rule 7 (A), General Rules of the United States District Court for the Middle District of Florida.

William Bernard Langley

William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

## CERTIFICATE OF MAILING

I hereby certify that on May 12, 1966, I served by mail one copy of the foregoing Reply Memorandum In Opposition To Motion To Dismiss And Motion To Strike upon William M. Madison, Attorney for the City of Jacksonville, Florida and City Council of Jacksonville, Florida and Clyde C. Cannon, at City Hall, Jacksonville, Florida, upon John Paul Howard, Attorney for R. R. Whitmore, at 205 Florida Title Building, Jacksonville, Florida and upon Rogers, Towers, Bailey, Jones, and Gay, Attorneys for New Deal Cab Company, at Florida Title Building, Jacksonville, Florida

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

NOTICE OF HEARING

## UNITED STATES DISTRICT COURT
## MIDDLE DISTRICT OF FLORIDA

WILLIAM BERNARD LANGLEY

-vs-

CITY OF JACKSONVILLE, FLORIDA,
CITY COUNCIL OF JACKSONVILLE, FLORIDA, et al.

No. 66-187-Civ-J.

To John Paul Howard, Esq., 205 Florida Title Bldg., Jacksonville, Florida
William Bernard Langley, 5819 Moncrief Road, Jacksonville, Florida
Madison, Mullis & Allen, 1103 City Hall, Jacksonville, Florida
Harry B. Fozzard, Esq., 905 Florida Title Building, Jacksonville, Florida
Rogers, Towers, Bailey, Jones and Gay, 1300 Florida Title Bldg., Jax., Fla.

TAKE NOTICE that the above entitled case has been set for Hearing on all pending Motions

at 2:00 o'clock P. M, on Monday, May 16 1966 at

Room 512, United States Courthouse and Post Office Building.

DATE April 21, 1966

WM. A. McRAE, JR.
Judge

[1966, May 19]

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY,

Petitioner,

-vs- NO. 66-187-Civ-J

CITY OF JACKSONVILLE, FLORIDA,
CITY COUNCIL OF JACKSONVILLE,
FLORIDA, CLYDE C. CANNON,
Chairman, Public Service and
Motor Transportation Committee
of Said Council, R. R. WHITMORE, and
NEW DEAL CAB COMPANY,
a Florida Corporation,

Respondents.

## REPLY MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS AND MOTION TO STRIKE

In accordance with Rule 7(B), General Rules of the United States District Court for the Middle District of Florida, William Bernard Langley, Petitioner in the above styled cause, files herewith his Reply Memorandum In Opposition To Motion To Dismiss and Motion To Strike, filed by Respondent New Deal Cab Company, a Florida Corporation, hereinafter called "New Deal". And Petitioner denies, refutes and opposes any and all allegations and motions of said New Deal.

Petitioner refutes, denies, opposes and takes exception to any and all allegations, contentions and conclusions set forth in New Deals' supporting memorandum.

## REPLY TO RESPONDENTS' MOTION TO DISMISS

New Deal has moved this Honorable Court to dismiss the above entitled action. Petitioner says that such a request by New Deal is improper and impossible, in that New Deal cannot possibly bring about the dismissal of the action involving four (4) Other Respondents in addition to New Deal. It would appear that New Deal may only move, properly, to dismiss the action against itself.

In paragraph^s one (1) through (4), of it's motion to dismiss, New Deal has addressed itself solely to Petitioner's amended complaint...And it is obvious that New Deal is attempting to construe the amended complaint, per se, as a separate lawsuit. Petitioner says that this is not the case and that the party defendants in the above styled cause are joined, and that all parties are charged with conspiring to deprive, and with depriving Petitioner of his constitutional rights...And all of this is in the original complaint.

Petitioner further says that common relief, in the form of Declaratory Judgement and Writ of Mandamus, is prayed for against the situation brought about by the joint, independent and/or related actions of all parties...And that all of this is in the original complaint.

Rule 15(c), Federal Rules of Civil Procedure provides:

> "Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading."

Thus, it is clearly evident, according to the aforementioned Rule 15(C), that as long as the amended complaint addresses itself to the subject matter of the original complaint, and does not introduce a totally new subject or controversy, the amended complaint relates back to the original.

Amendment to pleadings relate back, issues should be determined on their merits, and mere technicalities should be disregarded. Adams v Beland Realty Corp., (D.C. N. Y. 1960) 187 F. Supp. 680.

Of course it is understood that when a new party is brought in by amendment, for the purposes of statutory limitations, the amendment does not relate back to the date of the original pleading. Wirtz v W.G. Lockhart Construction Company, (D. C. Ohio 1963) 230F. Supp. 823

The purpose and intent of aforementioned amended complaint were to bring in New Deal as an additional party defendant, and to state the part played by this Respondent in the aforementioned conspiracy...Joined with other Respondents, the same claim and prayer for relief suffices for one and for all.

Petitioner denies the following allegations of New Deal, in its Motion To Dismiss in the following manner:

1. The Amended Complaint fails to state a claim against this Respondent upon which relief can be granted.

Petitioner denies the foregoing allegation, and says that a claim was properly stated in the original complaint upon which relief can be granted.

In a determination of validity of motion to state claim, each well-pleaded fact by plaintiff is to be taken as true and construed in a manner most favorable to plaintiff. Allied Oil Workers Union v. Ethyl Corp. (C. A. La. 1965) 341 F. 2d 47.

Circuit Court of Appeals

We find further that for purposes of motion to dismiss complaint for failure to state a claim, the court must assume that the allegations of the complaint are true and must address itself to the legal sufficiency of their significance. Hammonds V. Aetna Cas. & Sur. Co. (D.C. Ohio 1965) 237 F. Supp. 96

2. No relief is prayed for against this Respondent in said Amended Complaint.

Petitioner denies the foregoing allegations, and says that relief has been prayed for in the original complaint in the form of declaratory judgement, writ of mandamus, and for such other relief that the Court finds proper.

3. It does not appear from said Amended Complaint that there is a case or controversy between Petitioner and this Respondent.

Petitioner denies the foregoing allegation, and says that it does appear in the original complaint that there is an actual controversy between Petitioner and New Deal in that New Deal is joined as a party defendant in the controversy as set forth in the original complaint.

Rule 20(a), Federal Rules of Civil Procedure, provide that all persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action.

Where there is a common question of law or fact, defendants may be joined. Nagler v. Admiral Corp. (C.A.N.Y. 1957) 248 F. 2d 319.

4. It appears on the face of the Amended Complaint that federal jurisdiction over the subject matter is lacking, (1) no diversity of Citizenship being alleged, (2)no jurisdictional amount being set forth and (3)no facts having been stated indicating federal jurisdiction of the action. The Federal Statute cited, Sec. 2201, Title 28, U.S.C., the Declaratory Judgements Act, does not furnish a basis for federal jurisdiction.

Petitioner denies the foregoing allegations and says that federal jurisdiction over the subject matter is not lacking, and that it is shown in the original complaint.

Petitioner further says that if a federal claim is asserted, the federal court has jurisdiction of it whether or not it is even realized by the plaintiff. Table Talk Pies of Westchester v. Strauss, (D. C. N. Y. 1964) 237 F. Supp. 514.

Petitioner further says that federal courts are reluctant to grant motions to dismiss for lack of jurisdiction where causes of action, superficially at least, appear to be grounded on federal law or the constitution. *Hills' Jitney Service, Inc. v. Stiltz, Inc.*, (D. C. Del. 1965) 238 F. Supp. 881.

We find that further, as an over-all commentary upon New Deal's motion to dismiss, that dismissal for reasons not going to the merits are looked upon with disfavor particularly where litigant has not been afforded an opportunity through use of pre-trial techniques the right to be heard by trial court. *Fidelity & Cas. Co. of New York v. Life Companies, Inc.*, (D.C. N.Y. 1964) 36 F. R. D. 267.

We find further an almost identical determination; that on motion to dismiss, complaint must be viewed in light most favorable to plaintiff *and should not be dismissed unless it appears to a certainty that plaintiff would not be entitled to relief under any state of facts which could be proved in support of his claim*, and no matter how likely it may seem that pleader would be unable to prove his case, he is entitled, on averring a claim, to an opportunity to prove it. *Melo-Sonics Corp. V. Cropp.*, (C. A. Pa. 1965) 342 F. 2d 856.

(Emphasis Added)

## REPLY TO RESPONDENTS' MOTION TO STRIKE

Petitioner refutes and opposes the following allegations and contentions of Respondent New Deal in its Motion To Strike as follows:

1. In the title of the Amended Complaint, the words "AND WRIT OF MANDAMUS" for the reason that relief by writ of mandamus has been abolished.

Petitioner denies this allegation as applied to the instant cause, and says that writ of Mandamus has been abolished only as an original proceeding.

It has been decided that

Federal District Court has power to issue orders in the nature of mandamus only where it is done as an ancillary proceeding in aid of jurisdiction acquired on other grounds, and has no general original powers to issue such orders where they are the only relief sought. Newarks Morning Ledger Co. v. Republican Co., (D. C. Mass. 1960) 188 F. Supp. 813.

It is obvious that the applications of the foregoing citation are directly in point with the instant cause. Petitioner has prayed for Writ of Mandamus as an ancillary proceeding following his request for declaratory judgement. It is evident, upon the face of it, that New Deal has no meritorious grounds for a motion to strike the words "And Writ of Mandamus" in the title of the amended complaint...And it appears that New Deals' motion should be denied.

2. All of paragraph 1. of the Amended Complaint to the effect that Sec. 2201 of Title 28 U.S.C. confers jurisdiction on this Court, the same being a legal conclusion which is incorrect as a matter of law, it being well settled that said Statute, the Declaratory Judgments Act, does not furnish a basis for federal jurisdiction, and consequently such paragraph is irrelevant and impertinent.

Petitioner denies the contentions and conclusions of New Deal in the foregoing paragraph; and says that it is well understood that 2201 of Title 28 U.S.C. may not in and of itself furnish a basis or a requirement, as indicated by New Deal, but it provides the authority whereby the court within its discretion may declare the rights and other legal relations of any party seeking such declaration.

Petitioner further says that the jurisdictional requirements for United States District Courts to create a remedy under the provisions of 2201 of Title 28 U.S.C., or to do any thing under any section of any title, will depend upon whether a question arises under the U. S. Constitution, Federal

Acts, or Laws, treaties, or diversity of citizenship. And even if a question does arise under any of the aforementioned requirements, the Court, in its sound discretion, will determine whether an actual controversy exists.

It is quite obvious that mere mention of 2201 of Title 28 U.S.C. does not automatically confer jurisdiction upon a Federal District Court.

This section does not establish a new basis for jurisdiction in the federal courts, but merely establishes a new remedy, available in cases where jurisdiction otherwise exists. Lear Siegler, Inc. v. Adkins, (C. A. Cal. 1964) 330 F. 2d 595.

3. Petitioner denies this contention by New Deal and refers to his statements in opposition to paragraph two (2) of said New Deals' Motion To Dismiss.

4. All of paragraph 1. (second series) of the Amended Complaint concerning Petitioner's constitutional rights which have allegedly been denied him, the purported details thereof contained in sub-paragraphs (1), (2) and (3) of said paragraph 1. (second series) being insufficient to lead to the conclusion that Petitioner has been denied any of his constitutional rights, and consequently all of said paragraph 1. (second series), and said sub-paragraphs (1), (2), and (3) thereof, are immaterial and scandalous.

The contentions of New Deal in its paragraph four (4) of its Motion To Strike are refuted and opposed by Petitioner. New Deal's contention and basis for its request to strike is that statements made by Petitioner are insufficient to lead to the conclusion that Petitioner has been denied any of his constitutional rights.

New Deal, however, does not say to whom these aforementioned allegations may be insufficient...They are sufficient to Petitioner....And whether they are sufficient to the Court will be determined by the discretion of the Court.

Respondent New Deal says in essence that because of the insufficiency of this aforementioned portions of Petitioner's pleadings, said portions are scandalous...And it is upon the basis of this that New Deal requests said portions to be striken.

Petitioner says that if these aforementioned portions of the pleadings are so vague and insufficient whereby New Deal cannot frame a responsive pleading, the recourse for New Deal would be to move the Court for more definite statement in accordance with Rule 12(e), Federal Rules of Civil Procedure.

Petitioner further says that Rule 12(f), Federal Rules of Civil Procedure provide for the striking of any insufficient defense, but nowhere do the Federal Rules of Civil Procedure provide for striking any portion of a claim by plaintiff for insufficiency.

As to the aforementioned paragraphs of Petitioners amended complaint...Allegations in complaint would not be striken as scandalous and impertinent, where challenged material under proper judicial supervision, could not harm defendant. Rhodes v. Meyer, (D. C. Neb. 1963) 225 F. Supp. 80, affirmed 334 F. 2d. 709, certiorari denied 85 S. Ct. 263, 379 U. S. 915, 13 L. Ed. 2d 186.

5. All of paragraph 2. (second series) of the Amended Complaint concerning this Respondent's alleged motive, on its own behalf and on the behalf of other city licensed taxicab companies, to (1)maintain a monopoly, (2)prevent an in-good-faith public hearing, (3)deny Petitioner taxi permits and (4)deny the benefits of free enterprise to Petitioner, the allegations in said paragraph 2. (second series) being irrelevant, immaterial, impertinent and scandalous absent any allegation of unlawful acts on the part

of this Respondent, because (a) even if this Respondent's business is a monopoly as alleged, it is a lawful monopoly, being a regulated public service business operating under a permit in the nature of a certificate of public convenience and necessity from lawful authority, (b) this Respondent has no power to prevent an in-good-faith or any other kind of public hearing, and even if it did have such power, it is not unlawful for this Respondent to discourage the holding of public hearings, (c)this Respondent has no power to deny Petitioner or anyone else taxi permits, and even if it did have such power, it is not unlawful to deny taxicab permits, neither Petitioner nor anyone else having any constitutional right, privilege or immunity to use the public streets to carry on a taxicab business nor to be granted a permit so to do, and (d)this Respondent has no power to deny Petitioner the benefits of free enterprise.

Petitioner refutes and takes exception to all contentions and conclusions by New Deal in the foregoing paragraph. New Deal, in essence, says thes things:

(a) Even if their business is a monopoly, it is a lawful monopoly.

(b) New Deal has no power to prevent an in-good-faith public hearing, and even if it did have the power, or ability as the case may be, to discourage, or prevent as the case may be, said hearing, it is alright for New Deal to do so.

In order to properly refute the foregoing contentions and conclusions of New Deal, it is necessary to state, in haec verba, relevant sections of the Ordinance Code of the City of Jacksonville, Florida, as adopted February 9, 1965, and effective March 21, 1965. Section 42-19, Permits for additional taxicabs--Application to City Council, is as follows:

> "Any person desiring to operate taxicabs within the City in addition to those authorized and permitted by ~~sections~~ 42-14
> §

> and 42-15 hereof shall first make written application to the City Council for a permit to operate taxicabs on the streets and highways of the City, which application shall be in writing, addressed to the President of the City Council, and shall be filed with the City Recorder and shall contain the full name and address of the person and the principal location from which the business is to be operated (if a corporation, the application shall set forth the names of the officers of said corporation), the number of taxicabs to be operated under said permit if granted, and such other information as may be required by the City Council. (Code 1942, Ch. 43, § ~~section~~ 2; Code 1953, § ~~sectio n~~ 39-20)."

Section 42-20. Same-Investigation; hearing; notice of; issuance, is as follows:

> "Upon the filing of such application as provided by the preceding section, the City Council shall make or cause to be made an investigation thereon and shall fix a time and place for the holding of a public hearing upon such application, together with a notice of the time and place of such public hearing, upon all persons then operating taxicabs under a permit from the City. Such public hearing way be held by the City Council as a whole or by the Public Service and Motor Transportation Committee of the City Council, which committee shall report to the City Council its findings and recommendations for approval, disapproval or modification. The City Council may conduct such further hearings and make such additional investigations as it may deem necessary before passing upon the matter. If the City Council shall find that public convenience and necessity require the additional service for which application is made, said applicant shall then be issued a permit; if, however, there is more than one applicant, the City Council shall grant such permit to such applicant or applicants as the City Council may in its sound discretion, deem best qualified to render safe, efficient service to the citizens of the city. (Code 1942, ch. 43, § ~~section~~ 2; Code 1953, § ~~Section~~ 39-21)."

The term "Monopoly" is defined in Black's Law Dictionary, Fourth Edition as:

> "A privilege or peculiar advantage vested in one or more persons or companies, consisting in the exclusive right (or power) to carry on a particular business or trade manufacture a particular article, or control the sale of the whole supply of a particular commodity." -10-

The ordinances of the City of Jacksonville provide that any person desiring to operate taxicabs in the City of Jacksonville may file an application, and should they meet qualifications and if a need and necessity is found, they are permitted to do so. It is therefore quite obvious that the said ordinances do not provide for a so-called "lawful monopoly" in taxicab operations as is claimed by New Deal.

It is further obvious that New Deal does not have a "peculiar advantage" vested in them by aforementioned ordinances that give them the right of monopoly as defined by Black's Law Dictionary.

A "lawful monopoly", if such a thing exists, is control granted by law in the interest of public welfare. In this instance, an individual or a company is said to have a franchise.

A franchise is a special privilege conferred by government on individuals, and which does not belong to the citizens of the country generally by common right. Abbot v Refining Co., 4 Neb. 416, 420.

Secondary franchises are the special and peculiar rights, privileges, or grants which corporations may receive under its charter or from a municipal corporation, such as the right to use the public streets, exact tolls, collect fares, etc. State v Topeka Water Co., 61 Kan. 547, 60 p. 337.

It is plain that New Deal has no lawful monopoly, has no franchise and enjoys no special or peculiar privilege that cannot be enjoyed by any person, as stated in aforementioned ordinances, who applies for and qualifies for permit to operate taxicabs in the City of Jacksonville, Florida.

Of course there are certain utility companies such as telephone and telegraph companies, electric companies, and such transit companies as bus and trolley companies who hold franchise and could be considered, in a sense, as lawful monopolies.

New Deal, however, is not one of these--as clearly shown by aforementioned ordinances.

Absent any fact or law to prove the claim to a "lawful monopoly," New Deals' contention is arrogant, disdainful and impertinent.

Petitioner refutes and takes strong exception to the contention by New Deal that it is alright, so to speak, to discourage or otherwise attempt to prevent aforementioned in-good-faith public hearing.

No one has any right to interfere with any provision established by law to give an individual the opportunity to qualify for and to pursue his chosen occupation.

✓ Any act or acts performed by New Deal which would bring about a condition whereby a true evaluation of public need; and such act or acts are done purposely, is a denial and prevention of due process of law, in that the law provides for a public hearing to determine a need and necessity for additional taxi permits.

Further, to prevent or attempt to prevent public hearing is a conspiracy to monopolize and is in violation of Section 3 of the Sherman Anti-Trust Act.

Petitioner refutes and takes exception to that part of New Deal's paragraph five (5) of Motion To Strike all of paragraph 2 (second series) of the Amended Complaint, and says:

(a) At the time of the filing of the complaint, as amended, New Deal was guilty of interlocking or cross-directorship with one Safety Cabs, Inc., a corporation. Foregoing statement is a matter of public information, and is easily verified.

New Deal is a transferee of Thrift Cabs, Inc., trading and doing business in the name of Lincoln Cabs. Safety Cabs, Inc., a corporation, is a transferee of (1) Economy Cab Company of Jacksonville, Inc., a corporation, (2) Thrift Cabs, Inc., a corporation.

A transfer is an act of the parties, or of the law, by which the title to property is conveyed from one person to another. Innerarity v. Mims, 1 Ala. 669; Sands v. Hill, 55 N. Y. 18; Wallach v. Stein, 136 A. 209, 210, 103 J.J.L. 470.

To transfer is to convey or remove from one place, person, etc., to another; pass or hand over from one to another; specifically, to make over the possession or control of; sell or give. Chappell v. State, 216 Ind. 666, 25 N.E. 2d 999, 1001.

A transferee is he to whom a transfer is made. Kramer v. Spradlin, 148 Ga. 805, 98 S.E. 487, 488.

Section 42-14, of aforementioned Ordinance Code of the City of Jacksonville, Florida is stated in haec verba:

> " (a) It is hereby determined and declared that public convenience and necessity requires the operation of two hundred twenty unmetered taxicabs for the transportation of passengers in the City, and permits for the operation of unmetered taxicabs in the City are hereby granted to the following companies in the following number:
>
> Safety Cabs, Inc., a corporation, as transferee of Economy Cab Company of Jacksonville, a corporation, fifty unmetered taxicabs for the transportation of passengers;
>
> Safety Cabs, Inc., a corporation, as transferee of Thrift Cabs, Inc., a corporation, thirty unmetered taxicabs for the transportation of passengers;
>
> Safety Cabs, Inc., a corporation, forty unmetered taxicabs for the transpoortation of passengers;
>
> New Deal Cab Company, a corporation, fifty unmetered taxicabs for the transportation of passengers;
>
> New Deal Cab Company, a corporation, as transferee of Thrift Cabs, Inc. trading and doing business in the name of Lincoln Cabs, fifty unmetered taxicabs for the transportation of passengers.
>
> (b) The City Recorder is hereby authorized and directed to issue to each of the above named companies the number of permits granted to said companies by this section.

> (Code 1942, Ch 43, §~~Section~~ 2; Ord. No. BB-250, §~~Section~~ 1, 2-23-49; Ord. No. CC-185, 10-28-52; Code 1953, §~~Section~~ 39-15; Ord. No. EE-380, §~~Section~~ 1, 11-28-61)"

Section 42-16 of aforementioned Ordinance Code is shown in haec verba:

> "(a) It is hereby determined and declared that public convenience and necessity requires the operation of seventy metered taxicabs for the transportation of passengers in the City, in addition to the unmetered taxicabs now authorized , and permits for the operation of metered taxicabs in the City are granted to the following numbers:
>
> Safety Cabs, Inc., a corporation, as transferee of Economy Cab Company of Jacksonville a corporation, twenty metered taxicabs for the transportation of passengers;
>
> Safety Cabs, Inc., a corporation, thirty metered taxicabs for the transportation of passengers;
>
> Safety Cabs, Inc., as transferee of Thrift Cabs, Inc., a corporation, twenty metered taxicabs for the transportation of passengers;
>
> (b) The City Recorder is hereby authorized and directed to issue to each of the above name companies the number of permits granted to said companies by this section.
>
> (c) All taxicabs authorized hereunder shall be equipped with standard taxicab meters and each shall be operated exclusively as a metered cab. (Code 1942, Ch. 43, ~~Section~~ § 3; Ord. No. BB-250, §~~Section~~ 1, 2-23-49; Ord. No. CC-185, 10-28-52; Code 1953, §~~Section~~ 39-17; Ord. No. EE-380, §~~Section~~ 3, 11-28-61)"

(b) Said combination formed by aforementioned companies is in violation of Chapter 542, Section 542.05 and Section 542.12, Florida Statutes, 1963, which relate to contracts, combinations, and conspiracies.

It is quite obvious that Petitioner has good and sufficient reasons to allege all of paragraph 2 (second series) of Amended Complaint.

Said combinations and interlocking directorship existing between the two controlling companies, New Deal and Safety Cabs, Inc., shows on the face of it, that all city-licensed cab companies are one and the same, and this is in violation of Section 8, Clayton Anti-Trust Act.

# OPPOSITION AND EXCEPTIONS TO NEW DEAL'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AND MOTION TO STRIKE

New Deal's un-numbered paragraphs in chronological sequence one (1), two (2), and three (3), have been previously covered in Petitioners foregoing Opposition To Motion To Dismiss and Opposition To Motion To Strike.

Petitioner refutes and takes exception to contentions and conclusions by New Deal in its sequencial paragraphs four (4), five (5), and six (6), and says:

Webster's New International Dictionary, Second Edition, defines bribery as:

> "Act or practice of giving or taking a bribe; act of influencing the action of another by corrupt inducement."

Said Dictionary defines "bribe" as:

> "That which seduces; seduction; allurement."

Said Dictionary further defines "bribe" as:

> "Undue reward for anything against justice is a bribe."

Bribe is generally defined as anything of value; any gift, advantage or emolument; any price, reward or favor. State v. Douglas, 70 S.D. 203, 16 N.W. 2d 489, 496.

Thus, it appears that a gift must not necessarily, in each instance, be made to a public official to be considered a bribe.

New Deal candidly states that there is no common law crime of bribery. Petitioner takes exception to this conclusion. At common law, the gist of the offense of bribery was the tendency to prevent justice. People v. Peters, 265 Ill. 122, 106 N.E. 513, 515, Ann. Cass. 1916 A, 813.

Petitioner has made no charge against New Deal of bribery, per se, to be punishable as such. Rather, as clearly seen, Petitioner has charged New Deal with (1) the giving of rewards, or bribes as a means of conspiring to prevent an in-good-faith public hearing by conspiring to prevent a true determination of a need and necessity for additional taxi service by rewarding persons to appear in behalf of New Deal (and in behalf of all of the syndicated and combinated city-licensed taxicab companies) and (2) conspiring to monopolize and to prevent lawful competition in behalf of itself and all other city-licensed taxicab companies, in that Petitioner holds that they are one and the same.

Petitioner takes strong exception to New Deal's sequencial paragraph seven (7). Although Petitioner has, in the main, covered this in previous portions of his memorandum, it is felt necessary to show that New Deal has again erroneously referred to itself as a franchised public service company. Section 42-1 (b) of aforementioned City Ordinance Code is shown in haec verba:

> "(b) For the purposes of this chapter, and the construction of this article, a taxicab is hereby declared and defined to be any motor-driven vehicle for transportation for hire of passengers and which operates within the corporate limits of the City, except sightseeing cars and busses and motor busses operated under or pursuant to, franchise or special ordinance authorizing same".

Section 42-1 (e) of said City Ordinance Code is shown in haec verba:

> "(e) The word "permit" shall mean the written authority granted by the City Council under this chapter to engage in the taxicab business in the City, except where otherwise indicated by the context."

ORD. AA-85, listed in the Appendix of the aforementioned Ordinance Code, is shown in haec verba:

> "Grants franchise to Jacksonville Coach Company for operation of motor buses and motor bus lines".

Petitioner states firmly that nowhere in said Ordinance Code is New Deal granted a franchise to transport passengers in the City of Jacksonville. Foregoing sections

42-1 (b), 42-1(e), and ORD. AA-85, when read in conjunction, show clearly that New Deal is not a franchised public service company. Absent any law or fact in support of said conclusion, New Deal's contention to being a franchised public service company is arrogant and impertinent.

In taking exception to New Deal's sequencial paragraph eight (8), Petitioner says that this has been adequatly covered in preceding paragraphs and that New Deal is conspiring with themselves.

Petitioner further says that in order to state a case showing federal jurisdiction for deprivation of federal rights, it is not necessary to state "highly specific facts". Federal Courts are reluctant to grant motions to dismiss for lack of jurisdiction where causes of action, superfically at least, appear to be grounded on federal law or the constitution. Hills' Jitney Service, Inc., V. Stiltz, Inc., (D.C. Del. 1965), 238 F. Supp. 881.

Petitioner says that he has support in the facts alleged and that the process of discovery will reveal this very clearly.

Petitioner would show to this Honorable Court that New Deal has not, at any time, denied allegations of Petitioner.... Rather New Deal has attempted to justify doing the thing with which it is charged--which appears to Petitioner to be an admission of New Deal's guilt.

It appearing conclusively that New Deal has no meritorious grounds for dismissal or to strike, Petitioner prays that Respondent New Deal's Motion to Dismiss and Motion to Strike be denied.

William Bernard Langley

William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

CERTIFICATE OF MAILING

I hereby certify that on May 19, 1966, I served by mail one copy of the foregoing Reply Memorandum In Opposition To Motion To Dismiss And Motion To Strike upon William M. Madison, Attorney for the City of Jacksonville, Florida and City Council of Jacksonville, Florida and Clyde C. Cannon, at City Hall, Jacksonville, Florida, upon John Paul Howard, Attorney for R. R. Whitmore, at 205 Florida Title Building, Jacksonville, Florida and upon Rogers, Towers, Bailey, Jones, and Gay, Attorneys for New Deal Cab Company, at Florida Title Building, Jacksonville, Florida.

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

NOTICE OF HEARING (RESCHEDULED)

## UNITED STATES DISTRICT COURT
## MIDDLE DISTRICT OF FLORIDA

WILLIAM BERNARD LANGLEY

-vs-

CITY OF JACKSONVILLE, FLORIDA, CITY COUNCIL OF JACKSONVILLE, FLORIDA, et al.

No. 66-187-Civ-J.

To

John Paul Howard, Esq., 205 Florida Title Bldg., Jacksonville, Fla.
William Bernard Langley, 5819 Moncrief Rd., Jacksonville, Florida
Madison, Mullis & Allen, 1103 City Hall, Jacksonville, Florida
Harry B. Fozzard, Esq., Florida Title Building, Jacksonville, Fla.
Rogers, Towers, Bailey, Jones and Gay, 1300 Florida Title Bldg., Jax., Fla.

TAKE NOTICE that the above entitled case has been reset set for Hearing on all pending Motions

at 2:00 o'clock P. M, on Monday, May 23rd 1966 at Room 512, United States Courthouse and Post Office Building.

DATE April 27, 1966

WM. A. McRAE, JR.
Judge

[1966, May 24]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

NO. 66-187-Civ-J

WILLIAM BERNARD LANGLEY,

Petitioner,

vs.

CITY OF JACKSONVILLE, FLORIDA,
CITY COUNCIL OF JACKSONVILLE,
FLORIDA, CLYDE C. CANNON,
Chairman, Public Service and Motor
Transportation Committee of Said
Council, R. R. WHITMORE, and
NEW DEAL CAB COMPANY, etc.,

Respondents.

---------------------

# ORDER

This cause coming on to be heard on Motions to Dismiss, Motions to Strike, Motions for More Definite Statement and Motions to Quash filed by various defendants herein and Objections To Interrogatories filed by certain of the defendants and the Court having noted that subsequent to the filing of those motions and objections plaintiff has filed a Motion to Amend, and it appearing to the Court that the filing of an Amended Complaint may make moot one or more of aforementioned motions filed by defendants herein, it is

ORDERED:

1. Plaintiff's Motion to Amend is granted and plaintiff is allowed 20 days from date hereof to file an Amended Complaint, and defendants are allowed 15 days from date said Amended Complaint is filed in which to file responsive pleadings or motions to same.

2. Consideration of all other pending motions and objections is deferred until after the aforesaid Amended Complaint is filed and until further hearing has been set by notice of this Court.

3. The Motion To Dismiss filed by Mr. Harry B. Fozzard is granted.

DONE AND ORDERED at Jacksonville, Florida, this 23rd day of May, 1966.

Original signed:
Wm A. McRAE, JR.

JUDGE

I CERTIFY that copy of the foregoing ORDER signed by Judge Wm. A. McRae, Jr. on May 23, 1966 has been furnished to William Bernard Langley, Petitioner, 5819 Moncrief Road, Jacksonville, Florida; Madison, Mullis & Allen, Attorneys for City of Jacksonville, City Council and Clyde C. Cannon, 1103 City Hall, Jacksonville, Florida; Harry B. Fozzard, Special Attorney for the Council, 905 Florida Title Building, Jacksonville, Florida; and John Paul Howard, Attorney for R.R. Whitmore, 205 Florida Title Building, Jacksonville, Florida, by U.S. Mail, this 24th day of May, 1966.

/S/ FRED M. RINGEL

Fred M. Ringel
Rogers, Towers, Bailey, Jones & Gay
1300 Florida Title Building
Jacksonville, Florida 32202

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY,
Petitioner,

-VS-

CITY OF JACKSONVILLE,
FLORIDA, CLYDE C. CANNON,
R. B. BURROUGHS, JR., BARNEY
F. COBB, ELBERT N. HENDRICKS,
CECIL F. LOWE, W. O. MATHEWS,
JR., LAVERN R. REYNOLDS, ROBERT
R. ROBERTS, LEMUEL SHARP, Members
of the City Council of Jacksonville,
Florida, and NEW DEAL CAB COMPANY,
a Florida Corporation,

Respondents.

CIVIL ACTION NO. 66-[illegible]-Civ-J

## AMENDED COMPLAINT

## (PETITION FOR DECLARATORY JUDGEMENT AND WRIT OF MANDAMUS)

William Bernard Langley, Petitioner in the above styled cause, by leave of Court first had and obtained, hereby amends his complaint as follows:

In the matter of the so called Public Hearing upon application of William Bernard Langley, Petitioner in the above styled cause, for permit to operate taxicabs within the City of Jacksonville, Florida.

Petition of William Bernard Langley for Declaratory Judgement as to the constitititionality and lawfulness of the so-called public hearing held Tuesday, December 14, 1965, at 10:00 o'clock a. m., in City Council Chambers, City Hall, Jacksonville, Florida. Said hearing being held, supposedly, to determine a need and necessity for additional taxicab service within the City of Jacksonville, Florida upon the application of William Bernard Langley, hereinafter called "Petitioner", for permit to operate taxicabs within the City of Jacksonville, Florida. Petitioner is not certain of his rights and prays for a determination of violations of the following:

(a) Violation and deprivation of Petitioner's constitutional rights under the Equal Protection of the Law Clause, § 1, of the Fourteenth Amendment to the Constitution of the United States of America.

(b) Violation and deprivation of Petitioner's constitutional rights under the Due Process of Law Clause, § 1, of the Fourteenth Amendment to the Constitution of the United States of America.

(c) Violation and deprivation of Petitioner's constitutional rights under the Due Process In Civil Proceedings Clause, § 1, of the Fourteenth Amendment to the Constitution of the United States of America.

This action arises under the Fourteenth Amendment to the Constitution of the United States of America, as hereinafter more fully appears. Jurisdiction is conferred on this Court by Title 28, United States Code, Judiciary and Judicial Procedure, § 1343; it appearing that this controversy came on under color of ordinance.

To the above-named United States District Court:

Petitioner respectfully shows:

1. I am the plaintiff in the above matter before this Honorable Court.

2. I reside at 5819 Moncrief Road, in City of Jacksonville, County of Duval, and State of Florida.

3. The ordinances of the City of Jacksonville, Florida, provide a procedure whereby ANY PERSON desiring to operate taxicabs within said City may apply; and if they qualify, and if a need and necessity for taxicab service, in addition to that already authorized, is found to exist, applicant is granted permit to operate taxicabs in said City. Relevant portions of the Ordinance Code of the City of Jacksonville, Florida, as adopted February 9, 1965, and effective March 21, 1965; § 42-19; Permits for additional taxi-cabs...application to

cation to City Council, is as follows:

> "Any person desiring to operate taxicabs within the City in addition to those authorised and permitted by § 42-14 and 42-15 hereof shall first make written application to the City Council for a permit to operate taxicabs on the streets and highways of the City, which application shall be in writing, addressed to the President of the City Council, and shall be filed with the City Recorder and shall contain the full name and address of the person and the principal location from which the business is to be operated (if a corporation, the application shall set forth the names of the officers of said corporation), the number of taxicabs to be operated under said permit if granted, and such other information as may be required by the City Council. (Code 1942, Ch. 43, § 2; Code 1953, § 39-20."

§ 42-20. Same-Investigation: hearing; notice of: issuance, is as follows:

> "Upon the filing of such application as provided by the preceding section, the City Council shall make or cause to be made an investigation thereon and shall fix a time and place for the holding of a public hearing upon such application, together with a notice of the time and place of such public hearing, upon all persons then operating taxicabs under a permit from the City. Such public hearing may be held by the City Council as a whole or by the Public Service and Motor Transportation Committee of the City Council, which committee shall report to the City Council its findings and recommendations for approval, disapproval or modification. The City Council may conduct such further hearings and make such additional investigations as it may deem necessary before passing upon the matter. If the City Council shall find that public convenience and necessity require the additional service for which application is made, said applicant shall then be issued a permit; if, however, there is more than one applicant, the City Council shall grant such permit to such applicant or applicants as the City Council may in its sound discretion, deem best qualified to render safe, efficient service to the citizens of the city. (Code 1942, ch. 43, § 2, Code 1953, § 39-21)."

4. Your Petitioner has filed application with the City Council of Jacksonville, Florida many times for permit to operate taxicabs within the City of Jacksonville, and has always been refused.

5. On January 25, 1965, your Petitioner filed application with the City Council of Jacksonville, Florida to operate taxicabs within the City. Above named City Council of Jacksonville, Florida hereinafter called "City Council," failed to set a public hearing upon the application. On February 24, 1965, and on March 29, 1965

Continuation of Relevant Portions of the [illegible]

Florida Ordinance Code. in haec verba.

§ 42-15, of aforementioned Ordinance Code of the City of Jacksonville, Florida is stated in haec verba:

> "(a) It is hereby determined and declared that public convenience and necessity requires the operation of two hundred twenty unmetered taxicabs for the transportation of passengers in the City, and permits for the operation of unmetered taxicabs in the City are hereby granted to the following companies in the following number:
>
> Safety cabs, Inc., a corporation, as transferee of Economy Cab Company of Jacksonville, a corporation, fifty unmetered taxicabs for the transportation of passengers:
>
> Safety Cabs, Inc., a corporation, as transferee of Thrift Cabs, Inc., a corporation, thirty unmetered taxicabs for the transportation of passengers;
>
> Safety Cabs, Inc., a corporation, forty unmetered taxicabs for the transportation of passengers;
>
> New Deal Cab Company, a corporation, fifty unmetered taxicabs for the transportation of passengers;
>
> New Deal Cab Company, a corporation, as transferee of Thrift Cabs, Inc., trading and doing business in the name of Lincoln Cabs, fifty unmetered taxicabs for the transportation of passengers.
>
> (b) The City Recorder is hereby authorized and directed to issue to each of the above named companies the number of permits granted to said companies by this section.
>
> (Code 1942 Ch 43 § 2; Ord. No. BB-250, § 1, 2-23-49; Ord. No. CC-185, 10-28-52; Code 1953, § 39-15; Ord. No. EE-380, § 1, 11-28-61)"

Section 42-16 of aforementioned Ordinance Code is shown in haec verba:

> "(a) It is hereby determined and declared that public convenience and necessity requires the operation of seventy metered taxicabs for the transportation of passengers in the City, in addition to the unmetered taxicabs now authorized, and permits for the operation of metered taxicabs in the City are granted to the following numbers:
>
> Safety Cabs, Inc., a corporation, as transferee of Economy Cab Company of Jacksonville, a corporation, twenty metered taxicabs for the transportation of passengers:
>
> Safety Cabs, Inc., a corporation, thirty metered taxicabs for the transportation of passengers;
>
> Safety Cabs, Inc., as transferee of Thrift Cabs, Inc., a corporation, twenty metered taxicabs for the transporation of passengers;

(b) The City Recorder is hereby authorized and directed to issue to each of the above name companies the number of permits granted to said companies by this section.

(c) All taxicabs authorized hereunder shall be equipped with standard taxicab meters and each shall be operated exclusively as a metered cab. (Code 1942, Ch. 43 § 3; Ord. No. EE-250, § 1, 2-23-49; Ord. No. CC-185, 10-28-52; Code 1953 § 39-17; Ord. No. EE-380, § 3, 11-28-61)" and on March 29, 1965 Petitioner filed amendments to his application of January 25, 1965 seeking to obtain some action by City Council on his application. City Council still did not set a public hearing in accordance with law. On November 9, 1965, Petitioner addressed a letter to City Council requesting that a public hearing, in accordance with law be held to determine a need and necessity for additional taxicab service. On December 10, 1965, almost eleven (11) months after Petitioner filed his application, City Council finally notified Petitioner, through regular United States mail, of a hearing to be held December 14, 1965, at 10:00 a. m.

Petitioner requested Clyde C. Cannon, Chairman of the Committee on Public Service and Motor Transportation, to postpone the hearing to a later date and that the time be changed to late afternoon or night--explaining that insufficient notice had been given to notify interested parties and that the time of hearing was such that the class of people interested and in need of additional taxi service were working people and, for the most part, could not attend a hearing at 10:00 a. m., in that they would have to be at work. Clyde Cannon arbitrarily refused the request.

6. Your Petitioner was unable, because of such short notice of hearing, to contact interested persons who would not have to be at work at 10:00 a. m. and who therefore would be able to appear. However, Petitioner presented, at the hearing, a petition signed by one thousand (1000) persons, with addresses shown, petitioning City Council for additional taxi service.

Ninety-nine percent (99%) of the persons appearing against additional permits were taxi driver of City licensed taxi companies, city bus drivers, taxi cab and bus company officials, union officials, business associates, and other hirelings. There were apporximately 100 of these persons present.

Petitioner would show unto this Honorable Court that all of the foregoing appears to show that the City of Jacksonville, Florida by and, throught its City Council, and Clyde C. Cannon, R. B. Burroughs, Jr., Barney F. Cobb, Elbert M. Hendricks, Cecil F. Lowe, W. O. Mattox, Jr., Lavern R. Reynolds, Robert R. Roberts and Lemuel Sharp, have deprived Petitioner of his aforementioned constitutional rights in the following manner:

(a) Refusal to set a time and place for public hearing until almost eleven (11) months had passed from date of application.

(b) Refusal to give proper notice of said public hearing.

(c) Refusal to set the time of hearing at such a time when interested persons could appear.

(d) Refusal to grant an in-good-faith- public hearing to make a true evaluation of need and necessity for additional taxi service.

(e) Refusal to consider a petition by one thousand (1000) persons petitioning for additional taxi service in Jacksonville, Florida.

(f) Taking into consideration testimony brought on by New Deal Cab Company, A Florida Corporation, a controlling member of an unlawful combination; said testimony being paid for; as a principal reason for arbitrarily denying additional permits to petitioner.

(g) Arbitrarily denying permits to Petitioner as a result of a so-called public hearing that was not held in good faith.

(h) Denying a great number of interested persons the opportunity to appear and express their views and to offer testimony that would show a need for additional taxi service.

(i) Holding a public hearing designed, for all practical purposes, to deny Petitioner taxi permits.

7. Respondents City of Jacksonville, Florida, has, for many years prior to, and as of the filing of this Complaint, as amended, permitted one Safety Cabs, Inc., a Florida Corporation, to trade and do business as Yellow Cab Company, and said city, by and through its' license department, has issued to said Safety Cabs, Inc., a license to trade and do business as Yellow Cab Company.

§ 42-14 and 42-16 of aforementioned City Ordinances show quite clearly that Safety Cabs, Inc., is authorized to operate one hundred, ninety (190) taxicabs in Jacksonville. § 42-14 and 42-16 of said ordinances show clearly the names of the companies controlled by Safety Cabs, Inc., Yellow Cab Company is not one of these. There is no ordinance authorizing the operation of Yellow Cab Company either as itself (Yellow Cab Company, a dissolved Florida Corporation, dissolved December 14, 1936), or to be operated by Safety Cabs, Inc.

Ordinance No. W-179, Bill No. W 301 an ordiance regulating the operation of motor vehicles for hire, July 11, 1935 appears to be the first of the series of ordinaces regulating taxicab operation within the City of Jacksonville, Florida, a copy of which is attached hereto, and made a part hereof, and marked "exhibit A". Ordinance No. Y-23, Bill No. Y-44, November 9, 1937, appears to be the first ordinance establishing the number of permits for the companies indicated, a copy of which is attached hereto, and made a part hereof, and marked "Exhibit B". We do not see thereon a listing of Yellow Cab Company in any manner. Ordinance No. E. E. 380, Bill No. E. E. 432, November 28, 1961 shows the most recent allocation of permits and transfer control of companies as indicated. A copy of which is attached hereto, and made a part hereof, and marked "Exhibit C".

Again, and finally, we see no record of Yellow Cab Company or of Safety Cabs, Inc., being authorized to do business as Yellow Cab Company...For there is none, and the operation is illegal, and Respondent City of Jacksonville had permitted a secret number of taxi-cabs, far in excess of the number permitted by law, to be operated by Safety Cabs, Inc.

It appears that the City of Jacksonville, Florida, either actively or passively, is in collusion with the trust or combination formed by all City licensed taxi firms in Jacksonville (treated fully in following paragraphs) and permits what appears to be flagrant violation of the law in their favor. Yet, on the other hand, said City of Jacksonville, by and throught its City Council and City Council members, deliberately prevented Petitioner from first having a public hearing, in accordance with law, and held in good faith so that a valid and bonafide evaluation of the need and necessity for additional taxi service may be made.

Petitioner feels that these circumstances, in conjunction, would show that Petitioner has been denied equal protection of the law as well as due process of the law.

8. Respondent New Deal Cab Company, A Florida Corporation, hereinafter called "New Deal" and Safety Cabs, Inc., A Florida Corporation, hereinafter called "Safety"", prior to, and at the time of the filing of this Complaint, as amended, have interlocking directorship existing between the two corporations, as shown by letters from the Office of the Secretary of State of Florida, which are attached hereto, and made a part hereof, and marked "Exhibit D" and "Exhibit E."

§ 42-14 and 42-16 of aforementioned Ordinance Code of Jacksonville, Florida, show that New Deal and Safety are transferees of all other existing cab companies (with the exception of Yellow Cab Company which is operating outside of ordinance) and in conjunction with interlocking directorship have formed a trust or combination for the purpose of controlling all city licensed taxi operation and to eliminate all possible competition....

There is no competition between the existing companies, and this is a conspiracy to monopolize, and a monopoly does exist.

Said combination formed by New Deal, Safety, and other companies, as indicated in § 42-14 and 42-16 of aforementioned Ordinance Code in conjunction with interlocking directorship, is in violation of § 542.01 (1), 542.01 (a), 542.01 (c), and 542.01 (e) of Chapter 542, Florida Statutes, 1965, which relates to combinations restricting trade or commerce.

It appearing that the City of Jacksonville and the members of the City Council of Jacksonville, Florida, are consorting with and are in collusion with the taxi-cab Trust in Jacksonville, Florida, by permitting them to do things in the favor of the combination (as in the instance of Yellow Cab Company), and outside of law, and aiding in the maintaining of the monopoly set up by this aforementioned Trust or Combination, by not permitting Due Process of Law, and Equal Protection of the Law, by refusing to grant a bonafide and in-good-faith public hearing to determine a need for additional taxi service; such procedure being provided for by aforementioned Ordinances: it would appear to be proper to construe the City of Jacksonville, Florida, and the aforementioned members of the City Council of Jacksonville, Florida, as members of the Trust or combination as defined in § 542.01 (1) of Chapter 542, Florida Statutes, 1965, and to be likewise guilty of violating § 542.01 (1), 542.01 (a), 542.01 (c) and 542.01 (e) of said statute. Petitioner feels that should this hold against aforementioned respondents, the violations of Due Process and Equal Protection of the law is axiomatic. Petitioner is uncertain as to whether his rights have been denied in this matter, and asks this Honorable Court for a determination of the applications herein.

9. New Deal, a controlling member of aforementioned combination, acting in behalf of itself and other parties in the combination, has conspired (with Safety, the other controlling, interlocked controlling partner) to deprive Petitioner of his constitutional rights under the Due Process of Law, Equal Protection of the Law, and Due Process in Civil Proceedings Clauses of the Fourteenth amendment to the Constitution of the United States of America in the following manner:

(a) Offering to give money or menetary credits to taxi drivers and to other persons to appear in opposition to the granting of additional permits at the so-called public hearing of December 14, 1965.

(b) Giving money or monetary credits to taxi drivers, both on duty and off duty, and to other persons who appeared in opposition to the granting of additional permits at the so-called public hearing of December 14, 1965.

Your Petitioner would show unto this Honorable Court that the foregoing actions by New Deal, in preventing a bonafide public hearing, deprived Petitioner of due process of law and of equal protection of the law, and of due process in civil proceedings, in that a true determination of a need and necessity for additional taxi service could not be made when persons appear because they are paid or have been promised to be paid.

Petitioner would show further that any action taken by New, Dea being a controlling member of an unlawful combination, to prevent or to discourage the granting of additional taxi permits, is unlawful in that, from any point of view, its purpose would be to prevent or to eliminate competition. Aforementioned actions by New Deal, in conjunction with and coming on under color of the violations of relevant § sections of Chapter 542, Florida Statutes, 1966, and the violations thereof being applied to the instant cause, show obvious prevention of Petitioner to benefits of Due Process of law, and of Equal Protection of the law.

10. Peittioner believes strongly that the actions of all Respondents, when considered in conjunction and/or severally, would show that Petitioner has been denied his constitutional rights as forestated, and Petitioner is not certain of this, and petitions this Honorable Court to determine whether his rights have been denied.

Petitioner says that as a result of the denial of his constitutional rights, which he verily believes to have been denied, he has been sorely grieved, and has suffered great mental anguish, all of which has resulted in irreparable damage to his emotional and mental state of well-being.

Wherefore, your Petitioner prays that this Honorable Court will accept this petition and that it assume jurisdiction of this action, and that this Court will declare and decree as joint relief, that the Public Hearing of December 14, 1965 and relative matters pertaining thereto be unconstitutional and unlawful and that this Court will issue an order requiring the City of Jacksonville, Florid by and through its City Council, and R. B. Burroughs, Jr., Clyde C. Cannon, Barney F. Cobb, Elbert H. Hendricks, Cecil F. Love, W. O. Mattox, Jr., Lavern R. Reynolds, Robert R. Roberts and Lemuel Sharp said City Council to hold a public hearing upon sufficient notice, within a reasonable length of time and held at a time suitable for most persons to appear.

Petitioner prays further for money damages in the amounts and categories, and against certain Respondents, as indicated:

(a) Against The City of Jacksonville, Florida; one hunderd thousand dollars ($100,000.00) in punitive damages, and one hundred fifty thousand dollars ($150,000.00) in compensatory damages.

(b) Against New Deal Cab Company, a Florida Corporation; one hundred thousand dollars ($100,000.00) in punitive damages, and one hundred fifty thousand dollars ($150,000.00) in compensatory damages.

Petitioner prays for such other and further relief in the premises, as to the Court may seem right and proper, and to which the Court may find the Petitioner entitled.

Your Petitioner further prays that this Honorable Court will retain jurisdiction of the parties and of all matters pertaining thereto.

Dated: June 10, 1966

William Bernard Langley
William Bernard Langley,
Petitioner

United States of America,
Middle District of Florida
County of Duval, ss.

William Bernard Langley, being duly sworn, deposes and says that he is the petitioner named in the foregoing petition subscribed by him; that he has read the contents thereof, and that the statements made are true, as he verily believes.

William Bernard Langley
William Bernard Langley,
Petitioner

Joan Elsurck, Notary

Notary Public, State of Florida at Large
My commission expires Sept. 26, 1967
Bonded by National Surety Corporation

## ORDINANCE NO. W-179
## BILL NO. W-301

**AN ORDINANCE** regulating the operation of motor vehicles for hire, and providing a penalty for the violation of the provisions thereof.

**BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF JACKSONVILLE, FLORIDA.**

SECTION 1. (a) For the purposes of this ordinance, and the construction of this ordinance, a "taxicab" is hereby declared and defined to be any motor driven vehicle for transportation for hire of passengers and which operates within the corporate limits of the City of Jacksonville, Fla., except sightseeing cars and busses, street cars and motor busses operated under or pursuant to, franchise or special ordinance authorizing same.

(b) The word "Person" as used in this ordinance, shall include an individual, a firm, a copartnership, a corporation, a company, or an association or joint stock association.

(c) The word, "permit" shall mean the written authority granted by the City Council of the City of Jacksonville under this ordinance to engage in the taxicab business in the City of Jacksonville, except where otherwise indicated by the context.

(d) The word "taxicab" and the word "taxicabs" shall be held to mean and include both the singular and plural.

(e) By "highway" as used in this ordinance is meant any of the business streets, boulevards, avenues, drives or alleys of the City of Jacksonville.

SECTION 2. It shall be unlawful for any person to engage in the business of operating taxicabs on the highways of the City of Jacksonville until the provisions of this ordinance shall have been complied with.

(a) Any person desiring to operate taxicabs within the City of Jacksonville shall first make written application to the City Council of the City of Jacksonville for a permit to operate taxicabs on the highways of the City, which application shall be in writing, addressed to the president of the city council, and shall be filed with the City Recorder and shall contain the full name and address of the person and the principal location from which the business is to be operated, (if a corporation, the application shall set forth the names of the officers of said corporation) the number of taxicabs to be operated under said permit if granted, and such other information as may be required by the City Council.

Upon the filing of such application, the City Council shall make or cause to be made an investigation thereon and shall fix a time and place for the holding of a public hearing upon such application. The City Recorder shall serve a copy of such application, together with a notice of the time and place of such public hearing, upon all persons then operating taxicabs under permit from the city. Such public hearing may be held by the City Council as a whole or by a committee appointed by the City Council for that purpose, but such Committee shall report to the City Council its findings and recommendations for approval, disapproval or modification. The City Council may conduct such further hearings and make such additional investigation as it may deem necessary before passing upon the matter. If the person applying for such permit was not operating taxicabs in the City at the time this Ordinance becomes a law, or if said application shall be for permit to operate additional taxicabs under permit theretofore issued, then the City Council shall determine by and through the hearings and investigations as hereinbefore provided whether or not public convenience and necessity will be promoted by the additional proposed taxicab service, and if the City Council shall determine that public convenience and necessity will not in its [illegible] promoted by such additional proposed service, then permit therefor shall not be granted. If, on the other hand, the City Council shall find that in its opinion public convenience and necessity require such additional service, then, in that event, the permit shall be granted if the applicant is then lawfully engaged in the taxicab business in the City of Jacksonville under permit, provided, however, that the privilege of furnishing such additional service shall be allotted to the applicant and to the other persons lawfully engaged under a permit in operating taxicabs in the City of Jacksonville, in proportion to the number of vehicles being operated by them. If the applicant shall not then be operating taxicab service under permit, then the person or persons engaged in rendering such service under permit, shall first be given the right and privilege in proportion to the number of taxicabs being operated by them, of furnishing such additional service by providing additional taxicabs as may be necessary, within a reasonable time. If the person then engaged in such taxicab business refuses to furnish such additional service, by providing such additional taxicabs, within a reasonable time, not more than thirty (30) days, then the permit to such other person may be granted.

Every person operating taxicabs as herein defined, in the City of Jacksonville, at the time of the passage of this Ordinance shall, within ten days after this Ordinance shall become a law, file with the City Recorder a written statement and schedule setting forth (a) the full name of the person operating the same, (b) the principal place of business from which the same is operated, (c) if the operator is a corporation, the names of the officers shall be set forth, (d) the average number of taxicabs per day actually operated on the highways of the City of Jacksonville by him, or it, during the six-months period immediately preceding the time when this ordinance becomes a law, and (e) such other information as the City Council may require.

Any persons legally operating taxicabs in the City of Jacksonville under permit at the time this ordinance shall become a law, shall be entitled to a permit as a matter of right to operate the average number of taxicabs per day actually operated on the highways of the City of Jacksonville by him, or it, during any month in the six-months period immediately preceding the time when this ordinance became law, and, upon the filing with the City Recorder of the writte statement and schedule hereinbefore required, the City Recorder shall issue such permits.

If a person then operating taxicab business in the City shal apply for a permit to operate any additional number of cars, then in order to secure such permit, h must proceed in the manner provided for securing an origina permit and certificate.

Permits, when issued, shall no be transferable without the consent of the City Council, or it duly authorized committee, provided, however, that holders o permits may make replacement and substitutions of taxicabs, provided the number of taxicabs operated does not exceed the number provided for in the permi already issued to such holder.

SECTION 3. PENALTY. An person, firm or corporation wh shall violate any of the term provisions or conditions of thi Ordinance, shall upon convictio therefor, be punished by fine no exceeding $200.00 or by impri onment not exceeding sixty (60 days, or by both such fine an imprisonment, in the discretio of the Municipal Judge.

SECTION 4. This ordinanc shall become effective on its passage and approval by the Mayo and due publication as require by law.

SECTION 5. Provided, howeve that nothing herein containe shall be construed as a franchis or to give any vested rights any operator of taxicabs o anyone else and further provide that this ordinance may amended or repealed at any tim

Passed by City Council Ju 25, 1935. Approved July 11, 193

JNO. T. ALSOP, JR.
Mayo

Attest:
W. C. ALMAND,
(Seal) Recorder.

(Published in The Jacksonvill Journal July 12, 1935.)
(No. 5724)

EXHIBIT A

. EE-380
E-432
AMENDING
39-17, 39-
EALING
31, 39-33
39-66, BOTH
, OF CHAPTER
OF THE JACKSONVILLE ORDINANCE CODE OF 1953, RELATING TO VEHICLES FOR HIRE, SO AS TO RECORD THE PRESENT HOLDERS OF GRANTS OF PERMITS FOR THE OPERATION OF TAXICABS IN THE CITY, AUTHORIZE NOT MORE THAN SEVEN PASSENGERS TO OCCUPY A TAXICAB, REMOVE THE REQUIREMENT FOR GOVERNORS OR SPEED CONTROL DEVICES ON MOTOR VEHICLES FOR HIRE, AND ELIMINATE PROVISIONS WITH REFERENCE TO COLOR OR SEGREGATION OF PASSENGERS AND WITH REFERENCE TO JITNEY BUSSES; AND REPEALING SUB-PARAGRAPH (c) of PARAGRAPH (306) OF SECTION 22-32 OF SAID CODE RELATING TO THE SCHEDULE OF LICENSE TAXES FOR JITNEY BUSSES.

BE IT ORDAINED BY THE MAYOR - COMMISSIONER AND CITY COUNCIL OF THE CITY OF JACKSONVILLE:

Section 1. Sec. 39-15 of Chapter 39 of the Jacksonville Ordinance Code of 1953 is amended to read:

Sec. 39-15. Unmetered taxicabs — Number permitted.

(a) It is hereby determined and declared that public convenience and necessity requires the operation of two hundred twenty unmetered taxicabs for the transportation of passengers in the city, and permits for the operation of unmetered taxicabs in the city are hereby granted to the following companies in the following numbers:

Safety Cabs, Inc., a corporation, as transferee of Economy Cab Company of Jacksonville, a corporation, fifty unmetered taxicabs for the transportation of passengers;

Safety Cabs, Inc., a corporation, as transferee of Thrift Cabs, Inc., a corporation, thirty unmetered taxicabs for the transportation of passengers;

Safety Cabs, Inc.,'a corporation, forty unmetered taxicabs for the transportation of passengers;

New Deal Cab Company, a corportaion, fifty unmetered taxicabs for the transportation of passengers;

New Deal Cab Company, a corporation, as transferee of Thrift Cabs, Inc., trading and doing business in the name of Lincoln Cabs, fifty unmetered taxicabs for the transportation of passengers.

(b) The City Recorder is hereby authorized and directed to issue to each of the abovenamed companies the number of permits granted to said companies by this section.

Section 2. The purpose of Section 1 of this ordinence amending Sec. 39-15 of the Jacksonville Ordinance Code of 1953, is to remove the words "white" and "negro" from said Sec. 39-15 so as to comply with the law, and said Sec. 39-15 as amended shall not be construed to grant any additional permits for the operation of unmetered taxicabs, nor to change in any way the names of the present holders of grants of permits for the operation of existing taxicabs nor to change the number of taxicabs now authorized to be operated by said companies, but merely to confirm the same.

Cont'd

Section 3. 39-17 of Chapter 39 of the Jacksonville Ordinance Code of 1953 is amended to read:

Sec. 39-17. Metered taxicabs — N permitted; standard me installed.

it is hereby determined and declared that public convenience and necessity requires the operation of seventy metered taxicabs for the transportation of passengers in the city, in addition to the unmetered taxicabs now authorized, and permits for the operation of metered taxicabs in the city are granted to the following companies in the following numbers:

Safety Cabs, Inc., a corporation, as transferee of Economy Cab Company of Jacksonville, a corporation, twenty metered taxicabs for the transportation of passengers;

Safety Cabs, Inc., a corporation, thirty metered taxicabs for the transportation of passengers;

Safety Cabs, Inc., a corporation, as transferee of Thrift Cabs, Inc., a corporation, twenty metered taxicabs for the transportation of passengers.

(b) The City Recorder is hereby authorized and directed to issue to each of the abovenamed companies the number of permits granted to said companies by this section.

(c) All taxicabs authorized hereunder shall be equipped with standard taxicab meters and each shall be operated exclusively as a metered cab.

Section 4. The purpose of Section 3 of this ordinance amending Sec. 39-17 of the Jacksonville Ordinance Code of 1953, is to remove the word "white" from said Sec. 39-17 so as to comply with the law, and said Sec. 39-17 as amended shall not be construed to grant any additional permits for the operation of metered taxicabs, nor to change in any way the names of the present holders of grants of permits for the operation of existing taxicabs nor to change the number of taxicabs now authorized to be operated by said companies, but merely to confirm the same.

Section 5. Sec. 39-32 of Chapter 39 of the Jacksonville Ordinance Code of 1953 is amended to read:

Sec. 39-32. Number of passengers restricted to seven.

It shall be unlawful for the driver of any taxicab operating in the city to permit more than seven passengers, excluding the driver, to occupy said taxicab at the same time.

Section 6. Sec. 39-70 of Chapter 39 of the Jacksonville Ordinance Code of 1953 is amended to read:

Sec. 39-70. Minimum requirements for terminal facilities.

Any person operating such busses is hereby required to meet the following minimum requirements in respect to the terminal facilities required by this division for the comfort, safety and convenience of passengers:

(a) Such terminal facilities shall provide comfortable waiting rooms for passengers, suitably heated and suitably ventilated and with adequate seating capacity for the passengers using such terminal;

(b) All such terminals shall be adequately equipped with separate toilet and rest room installations for both sexes;

(c) All such terminals shall maintain sheltered loading platforms for the convenient loading and discharge of passengers, suitably protected from the weather.

Section 7. Sec. 39-31 of Chapter 39 of the Jacksonville Ordinance Code of 1952, relating to separate vehicles for white and colored passengers, duty of driver and arrest of violators, is he repealed.

Section 8. Sec. 39-33 of Chapter 39 of the Jacksonville Ordinance Code of 1953, relaiing to governors or speed control devices on motor vehicles for hire, is hereby repealed.

Section 9. Sections 39-46 to 39-66, both inclusive, of Chapter 39 of the Jacksonville Ordinance Code of 1953, being all of Division 2 of Article II of said Chapter, relating to jitney busses, are hereby repealed.

Section 10. Sub-paragraph (c) of paragraph (306) of Section 22-32 of the Jacksonville Ordinance Code of 1953, relating to the schedule of license taxes for jitney busses, is hereby repealed.

PASSED BY CITY COUNCIL NOVEMBER 28, 1961, and become a law because of the failure of the Mayor-Commissioner to return said ordinance at or before the December 12, 1961 meeting of the City Council.

ATTEST:
W. C. ALMAND (SEAL)
CITY RECORDER.

(PUBLISHED IN THE CHRONICLE, DECEMBER 22, 1961)

Contin

EXHIBIT C.

EXHIBIT C

---

# ORDINANCE NO. Y-2

## Bill No. Y-4

AN ORDINANCE Amending 2 of Ordinance No. W-179 entitled Ordinance Regulating the Operati Motor Vehicles for Hire and P ing for a Penalty for the violati the Provisions Thereof."

BE IT ORDAINED BY THE OR AND CITY COUNCIL OF CITY OF JACKSONVILLE:

SECTION 1. That Section Ordinance No. W-179 entitled "An dinance Regulating the Operation Motor Vehicles for Hire and Provid for a Penalty for the Violation of Provisions Thereof," be, and the is hereby amended so that same read as follows:

"SECTION 2. (a) It is hereby termined and declared that public co venience and necessity requires t operation of one hundred fifty tax cabs for the transportation of whi passengers and one hundred taxical for the transportation of negro pa sengers in the City of Jacksonville and permits for the operation of taxi cabs in the City of Jacksonville ar hereby granted to the following com panies in the following numbers, to-wit:

Economy Cab Company of Jacksonville, a corporation, fifty taxicabs for the transportation of white passengers;

Thrift Cabs, Inc., a corporation, fifty taxicabs for the transportation of white passenyers;

Safety Cabs, Inc., a corporation, fifty taxicabs for the transportation of white passengers;

New Deal Cab Company, a corporation, fifty taxicabs for the transportation of negro passengers.

Thrift Cabs, Inc., trading and doing business in the name and style of Lincoln Cabs, fifty taxicabs for the transportation of negro passengers.

(b) The City Recorder of the City of Jacksonville is hereby authorized and directed to issue to each of the above named companies the number of permits granted to said companies by this ordinance.

(c) Any person desiring to operate additional taxicabs within the City of Jacksonville shall first make written application to the City Council of the City of Jacksonville for a permit to operate taxicabs on the highways of the City, which application shall be in writing, addressed to the president of the City Council, and shall be filed with the City Recorder and shall contain the full name and address of the person and the principal location from which the business is to be operated, (if a corporation, the application shall set forth the names of the officers of said corporation) the number of taxicabs to be operated under said permit if granted, and such other information as may be required by the City Council.

Upon the filing of such application, the City Council shall make or cause to be made an investigation thereon and shall fix a time and place for the holding of a public hearing upon such application The City Recorder shall serve a copy of such application, together with a notice of the time and place of such public hearing, upon all persons then operating taxicabs under permit from the City. Such public hearing may be held by the City Council as a whole or by the Public Service and Motor Transportation Committee of the City Council, which committee shall report to the City Council its findings and recommendations for approval, disapproval or modification. The City Council may conduct such further hearings and make such additional investigation as it may deem necessary before passing upon the matter. If the City Council shall find that public convenience and necessity require the additional service for which application is made, said applicant shall then be issued a permit; if, however, there is more than one applicant, the City Council shall grant such permit to such applicant or applicants as the City Council may, in its sound discretion, deem best qualified to render safe, efficient service to the citizens of Jacksonville.

(d) The power and authority to grant additional permits for the operation of taxicabs in the City of Jacksonville, or to reduce the number of taxicabs operated under any permit hereby or hereafter granted, or to withdraw the permits for the operation of taxicabs in the City of Jacksonville hereby granted or which may be hereafter be granted, is expressly reserved to the City Council.

(e) If a person then operating a taxicab business in the City shall apply for a permit to operate any additional number of cabs, then, in order to secure such permit, he must proceed in the manner provided for securing an original permit and certificate.

(f) Permits, when issued, shall not be transferable without the consent of the City Council, or its duly authorized committee, provided, however, that holders of permits may make replacements and substitutions of taxicabs, provided the number of taxicabs operated does not exceed the number provided for in the permit already issued to such holder."

PASSED BY CITY COUNCIL OCTOBER 26, 1937.

BECAME A LAW WITHOUT APPROVAL OF THE MAYOR, NOVEMBER 9, 1937.

Attest:

EXHIBIT B

TOM ADAMS
SECRETARY OF STATE

Office of the
Secretary of State
State of Florida
Tallahassee

May 27, 1966

Mr. William B. Langley
5819 Moncrief Road
Jacksonville, Florida 32202

In reply refer to:
corp-gm

Dear Sir:

Subject: NEW DEAL CAB COMPANY A Florida corporation

The records of this office show the following:

x___1. Incorporated or permit issued on April 9, 1933.

___2. Principal place of business in Florida as

___3. Capital stock authorized or allocated at

___4. Annual reports filed and capital stock taxes paid to and including those due July 1,
Last report was dated

___5. Voluntarily dissolved or withdrawn on

___6. Dissolved or permit cancelled by proclamation of the Governor for non-payment of capital stock taxes on

___7. Resident agent named in last report as

x___8. The ~~last officers and/or~~ directors on record ~~are~~ as of 1964 & 65

C. D. Towers, 1022 West Bay Street, Jacksonville, Florida
C. D. Towers, Jr., same
M. F. Marvin, same
J. D. Marvin, same

Sincerely,

TOM ADAMS
Secretary of State

By
V. L. Whittier, Jr.
Director
Corporations Division

corp-19
8-10-64

VLW/
gm

EXHIBIT D

TOM ADAMS
SECRETARY OF STATE

Office of the
Secretary of State
State of Florida
Tallahassee

In reply refer to:

Subject:

SAFETY CABS, INC.     A Florida corporation

The records of this office show the following:

x 1. Incorporated or permit issued on April 29, 1935.

___2. Principal place of business in Florida as

___3. Capital stock authorized or allocated at

___4. Annual reports filed and capital stock taxes paid to and including those due July 1,
Last report was dated

___5. Voluntarily dissolved or withdrawn on

___6. Dissolved or permit cancelled by proclamation of the Governor for non-payment of capital stock taxes on

___7. Resident agent named in last report as

x 8. The ~~last officers and/or~~ directors on record ~~xxx~~ for 1964 & 65 are:

C. D. Towers, 1022 West Bay Street, Jacksonville, Florida
C. D. Towers, Jr., same
M. F. Marvin, same
J. D. Marvin, same

Sincerely,

TOM ADAMS
Secretary of State

V. L. Whittier Jr.

By
V. L. Whittier, Jr.
Director
Corporations Division

corp-19
8-10-64

VLW/ gm

EXHIBIT E

[1966, June 17]

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY, )
Petitioner, )
-vs- ) CIVIL ACTION NO. 66-187-CIV-J
CITY OF JACKSONVILLE, )
FLORIDA, et al., )
Respondents. )

## NOTICE OF FAILURE TO ANSWER INTERROGATORIES AND REQUEST FOR ANSWERS

TO: Marion F. Marvin, Agent
For New Deal Cab Company,
A Florida Corporation,

c/o Rogers, Towers, Bailey, Jones & Gay,
Attorneys For New Deal Cab Company
Florida Title Building
Jacksonville, Florida

William Bernard Langley, Petitioner in above cause, on April 18, 1966, propounded interrogatories to Marion F. Marvin, Agent for New Deal Cab Company, A Florida Corporation.

Rule 33, Federal Rules of Civil Procedure, require that aforementioned interrogatories be answered within fifteen (15) days of service thereof, separately, fully, in writing, and under oath; and further provides that within ten (10) days of service thereof, a party may file objections to interrogatories and request a hearing on the objections as soon as possible.

Answers to aforementioned interrogatories, in accordance with said Rule 33, should have been served on or before May 3, 1966, in that objections to interrogatories were not filed within the alloted ten (10) days.

Motion by Petitioner, filed April 13, 1966, did not, in any manner, moot any or all of aforementioned interrogatories. Amended Complaint filed by Petitioner June 13, 1966, did not, in any manner, moot any or all of said interrogatories, and answers to said interrogatories are forty-four (44) days over-due from date of May 3, 1966.

Accordingly, Petitioner respectfully requests that New Deal Cab Company, a Florida Corporation, by and through its' aforementioned Agent, serve answers to interrogatories propounded to said Agent on April 18, 1966, within five (5) days from date of service hereof.

Dated June 17, 1966

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

## CERTIFICATE OF MAILING

I do certify that copies of foregoing Notice of Failure To Answer Interrogatories And Request For Answers were mailed to Rogers, Towers, Bailey, Jones & Gay, Attorneys for New Deal Cab Company, A Florida Corporation, at Florida Title Building, Jacksonville, Florida, and to William M. Madison, Attorney for the City of Jacksonville, Florida, City Hall, Jacksonville, Florida, on June 17, 1966.

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

[1966, June 23]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA.
JACKSONVILLE DIVISION.

NO. 66-187-Civ-J

WILLIAM BERNARD LANGLEY, )

Petitioner, )

-vs- )

CITY OF JACKSONVILLE, FLORIDA, )
CITY COUNCIL OF JACKSONVILLE,
FLORIDA, CLYDE C. CANNON, )
Chairman, Public Service and Motor
Transportation Committee of said )
Council, R. R. WHITMORE, and
NEW DEAL CAB COMPANY, etc., )

Respondents. )

## MOTION TO STRIKE AND SUPPRESS INTERROGATORIES

Defendant New Deal Cab Company moves the Court to strike and suppress the interrogatories heretofore filed by plaintiff and directed to Marion F. Marvin on the grounds that said Marion F. Marvin is not a party to this suit and neither he nor defendant New Deal Cab Company is required to answer, object or otherwise respond to said interrogatories.

ROGERS, TOWERS, BAILEY, JONES & GAY

Robert S. Smith

Robert S. Smith
1300 Florida Title Building
Jacksonville, Florida 32202

Attorneys for Defendant New Deal Cab
Company

I DO CERTIFY that a copy hereof has been furnished to William Bernard Langley, Petitioner, 5819 Moncrief Road, Jacksonville, Florida; Messrs. Madison, Mullis & Allen, attorneys for City of Jacksonville, City Council and Clyde C. Cannon, 1103 City Hall, Jacksonville, Florida; Harry B. Fozzard, Esq., Special Attorney for the Council, 905 Florida Title Building, Jacksonville, Florida; and John Paul Howard, Esq., attorney for R. R. Whitmore, 205 Florida Title Building, Jacksonville, Florida, by U.S. Mail, this 23rd day of June, 1966.

Robert Smith

Attorney

[1966, June 23]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA.
JACKSONVILLE DIVISION.

NO. 66-187-Civ-J

WILLIAM BERNARD LANGLEY, )

Petitioner, )

-vs- )

CITY OF JACKSONVILLE, FLORIDA, )
CITY COUNCIL OF JACKSONVILLE,
FLORIDA, CLYDE C. CANNON, )
Chairman, Public Service and Motor
Transportation Committee of said )
Council, R. R. WHITMORE, and
NEW DEAL CAB COMPANY, etc., )

Respondents. )

## BRIEF IN SUPPORT OF MOTION TO STRIKE AND SUPPRESS INTERROGATORIES

For the information of the Court, defendant New Deal Cab Company respectfully shows that the interrogatories referred to in plaintiff's Notice of Failure to Answer Interrogatories are directed to "Marion F. Marvin, Agent for New Deal Cab Company." It affirmatively appears that said Mr. Marvin is not a party to this suit and that no interrogatories have been directed to defendant New Deal Cab Company to which said defendant could file objections or answers. The rule is well settled that interrogatories directed to an agent or attorney of a party do not require a response when said agent or attorney is not a party to the suit. See Holland v. Minneapolis-Honeywell Regulator Co., 28 F.2d 595 (D.C. D.C. 1961). The basis for the rule is found in Rule 33, Federal Rules of Civil Procedure, which provides only for service of written interrogatories upon an "adverse party." The party serving the interrogatories may not "select the particular officer or agent of the adverse party and direct the interrogatories by name to such officer or agent." Holland v. Minneapolis-Honeywell Regulator Co., supra.

In such situations as above stated, the proper procedure is for the opposing party to move to strike and suppress said interrogatories. See Steelman v. U.S.F.&G., 35 F.R.D. 120 (W.D. Mo. 1964). Defendant New Deal Cab Company submits that said motion should be granted in this case.

ROGERS, TOWERS, BAILEY, JONES & GAY

Robert S Smith

Robert S. Smith
1300 Florida Title Building
Jacksonville, Florida 32202

Attorneys for Defendant New Deal Cab Company

I DO CERTIFY that a copy hereof has been furnished to William Bernard Langley, Petitioner, 5819 Moncrief Road, Jacksonville, Florida; Messrs. Madison, Mullis & Allen, attorneys for City of Jacksonville, City Council and Clyde C. Cannon, 1103 City Hall, Jacksonville, Florida; Harry Fozzard, Esq., Special Attorney for the Council, 905 Florida Title Building, Jacksonville, Florida; and John Paul Howard, Esq., attorney for R. R. Whitmore, 205 Florida Title Building, Jacksonville, Florida, by U.S. Mail, this 23rd day of June, 1966.

Robert S Smith

Attorney

[1966, June 27]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, DIVISION

WILLIAM BERNARD LANGLEY, )
Petitioner,
-vs-
) CIVIL ACTION NO. 66-187-Civ-J
CITY OF JACKSONVILLE, FLORIDA,
et al.,
Respondents. )

The Respondents, R. B. BURROUGHS, JR., BARNEY F. COBB, ELBERT H. HENDRICKS, CECIL F. LOWE, W. O. MATTOX, JR., LAVERN R. REYNOLDS, ROBERT R. ROBERTS and LEMUEL SHARP, move the Court as follows:

## MOTION TO QUASH

1.To Enter an Order quashing any purporting service against them, either severally or jointly, and dismissing the action as to each of them for lack of jurisdiction, on the ground that none of them have been served with a copy of the Second Amended Complaint and a copy of the Summons as required by law.

## MOTION TO DISMISS

2. To dismiss the action on the ground that the Court lacks jurisdiction over the subject matter because it appears on the face of the Second Amended Complaint that the alleged claim does not arise under the constitution or laws of the United States as is alleged therein.

3. To dismiss the action on the ground that the Second

Amended Complaint fails to state a claim against Respondents, or any of them, upon which relief can be granted.

s/ William M. Madison
(William M. Madison)

s/ Claude L. Mullis
(Claude L. Mullis)

s/ William Lee Allen
(William Lee Allen)

Attorneys for Respondents,
R. B. Burroughs, Jr., Barney F. Cobb,
Elbert H. Hendricks, Cecil F. Lowe,
W. O. Mattox, Jr., Lavern R. Reynolds,
Robert R. Roberts and Lemuel Sharp,
1103 City Hall
Jacksonville, Florida 32202

I HEREBY CERTIFY that a copy hereof has been furnished to WILLIAM BERNARD LANGLEY, 5819 Moncrief Road, Jacksonville, Florida 32209, and to ROBERT S. SMITH, ESQUIRE, of Rogers, Towers, Bailey, Jones & Gay, 1300 Florida Title Building, Jacksonville, Florida 32202, attorneys for New Deal Cab Co., by mail, this 27th day of June, 1966.

s/ William Lee Allen
Attorney

[1966, June 27]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY,

Petitioner,

-vs- CIVIL ACTION NO. 66-187-Civ-J

CITY OF JACKSONVILLE, FLORIDA,
et al.,

Respondents.

## MEMORANDUM BRIEF

Respondents, R. B. BURROUGHS, JR., BARNEY F. COBB, ELBERT H. HENDRICKS, CECIL F. LOWE, W. O. MATTOX, JR., LAVERN R. REYNOLDS, ROBERT R. ROBERTS and LEMUEL SHARP, pursuant to Rule 7(a) of the General Rules of the United States Code of the Middle District of Florida, file herewith their Brief supporting the Motion to Quash and Motion to Dismiss, as follows:

## MOTION TO QUASH

"A 'pleading subsequent to the original Complaint', which asserts a claim for relief against a person over whom the Court has not at the time acquired jurisdiction, must be served upon such person not a party, along with a copy of the Summons, in the same manner as the copy of the Summons and of the original Complaint is required to be served upon the original Defendants." Moore's Manual §903/2/.

## MOTION TO DISMISS

See remarks of Respondents, CITY OF JACKSONVILLE and CLYDE C. CANNON, in Memorandum Brief filed in support of their

Motion to Dismiss.

s/ William M. Madison
(William M. Madison)

s/ Claude L. Mullis
(Claude L. Mullis)

s/ William Lee Allen
(William Lee Allen)

Attorneys for Respondents,
R.B. Burroughs, Jr., Barney F. Cobb,
Elbert H. Hendricks, Cecil F. Lowe,
W. O. Mattox, Jr., Lavern R. Reynolds,
Robert R. Roberts and Lemuel Sharp,
1103 City Hall
Jacksonville, Florida 32202

I HEREBY CERTIFY that a copy hereof has been furnished to WILLIAM BERNARD LANGLEY, 5819 Moncrief Road, Jacksonville, Florida 32209, and to ROBERT S. SMITH, ESQUIRE, of Rogers, Towers, Bailey, Jones & Gay, 1300 Florida Title Building, Jacksonville, Florida 32202, attorneys for New Deal Cab Co., by mail, this 27th day of June, 1966.

s/ William Lee Allen
Attorney

[1966, June 27]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY,
Petitioner,

-vs-

CITY OF JACKSONVILLE, FLORIDA, et al.,
Respondents.

CIVIL ACTION NO. 66-187-Civ-J

## MEMORANDUM BRIEF

Respondents, CITY OF JACKSONVILLE and CLYDE C. CANNON, pursuant to Rule 7(A) of the General Rules of the United States Court for the Middle District of Florida, file herewith their brief supporting their Motion to Dismiss, Motion to Strike and Motion for More Definite Statement, as follows:

## MOTION TO DISMISS

Rather than attempting to go into great detail, and write a complete new brief, it is the intention of Respondents herein to attempt to touch only on the new matters in the Second Amended Complaint, and the Court's attention is invited to the Memorandum Brief previously filed herein.

1. Lack of Jurisdiction:

Petitioner seeks the relief sought in his earlier Petition, i.e., declaration that the public hearing of December 14, 1965, was unconstitutional and unlawful and a Writ of Mandamus requiring the City Council to hold a public hearing upon sufficient notice and at a "suitable" time. Additionally, Petitioner seeks compensatory and punitive damages.

In this Complaint Petitioner asserts jurisdiction solely by virtue of the Fourteenth Amendment and 28 U.S.C. §1343.

Paragraph 1 of §1343 has been held not applicable to Cities, U.S. ex rel Lee v. Illinois 343 F. 2d 120. Paragraph 2 of §1343, obviously, by its terms is inapplicable to Cities since a City has been held not to be a person within the meaning of 42 U.S.C. §1985. Monroe v. Pape, 365 U.S. 167, 5 L. Ed. 2d 492, 81 S. Ct. 473. Paragraph 3 of §1343 authorizes U. S. District Courts to:

> "to redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States." (emphasis added).

However, in the instant case, Petitioner has failed to show any such right, privilege or immunity.

2. Failure to State a Claim:

In addition to the cases cited in the previous Memorandum Brief filed in this cause, Respondents would like to invite the Court's attention to Mosher v Beirne (C.A. Mo. 1966), 357 F. 2d 638, a case in which the Plaintiff brought a civil rights action under 42 U.S.C.A. §1983, seeking actual and punitive damages, because of the City's refusal to grant a license for him to operate a Teenager's Club. Admittedly, in addition to refusing the permit, the Plaintiff's club was pad locked because of his statement that he would operate without a permit; however, the case is noteworthy in emphasizing the distinction between the persons civil rights and his natural rights. As in the Mosher case, Petitioner has not challenged the validity of the ordinances upon which the Respondent, City of Jacksonville, operates, nor has he (as in Mosher) demonstrated that he has been deprived of any constitutional or statutory right.

## MOTION TO STRIKE

Respondents will not burden the Court with further cites of authority hereunder, relying on the argument and authorities contained in Memorandum Brief filed herein previously.

s/ William M. Madison
(William M. Madison)

s/ Claude L. Mullis
(Claude L. Mullis)

s/ William Lee Allen
(William Lee Allen)

I HEREBY CERTIFY that a copy hereof has been furnished to WILLIAM BERNARD LANGLEY, 5819 Moncrief Road, Jacksonville, Florida, 32209, by mail this 27th day of June, 1966.

s/ William Lee Allen
(William Lee Allen)

[1966, June 27]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY, )
Petitioner, )
-vs- ) CIVIL ACTION NO. 66-187-Civ-J
CITY OF JACKSONVILLE, FLORIDA, et al., )
Respondents. )

Respondents, CITY OF JACKSONVILLE and CLYDE C. CANNON, move the Court as follows:

## MOTION TO DISMISS

1. To dismiss the action on the ground that the Court lacks jurisdiction over the subject matter because it appears on the face of the Petition, as amended, that the alleged claim does not arise under the Constitution or Laws of the United States as is alleged therein.

2. To dismiss the action on the ground that the Petition, as amended, fails to state a claim against Respondents, or either of them, upon which relief can be granted.

3. To dismiss the action on the ground that the Petition, as amended, does not comply with the requirement of Rule 8 (a) (2) that it "contain a short and plain statement of the claim showing that the pleader is entitled to relief."

4. To dismiss the action because it appears on the face of the Second Amended Complaint, that the members of the City Council of Jacksonville, Florida, namely: R.B. BURROUGHS, JR., BARNEY F. COBB, ELBERT H. HENDRICKS, CECIL F. LOWE, W. O. MATTOX, JR., LAVERN R. REYNOLDS, ROBERT R. ROBERTS and LEMUEL SHARP, other than Respondent, CLYDE C. CANNON, are indispensable parties to this action, but have not been made parties defendant because of lack of service of

process upon them, as more fully appears from Motion to Quash filed on their behalf herein.

## MOTION TO STRIKE

5. To strike from the Second Amended Complaint the following allegations on the ground that they are redundant, immaterial, impertinent and scandalous:

(a) In the title, the words "AND WRIT OF MANDAMUS".

(b) All of the introductory matter on Page 1 and Paragraphs (a), (b), and (c) at the top of Page 2, and the prayer thereof.

(c) The second paragraph of Paragraph 5.

(d) Paragraph 6.

(e) Paragraph 7; on the further ground that ordinances must be pleaded in haec verba.

(f) Paragraph 8.

(g) Paragraph 9.

(h) Paragraph 10, and so much of the prayer which seeks any action to be taken by any other members of the City Council, other than Respondent, CLYDE C. CANNON, and that portion praying any damages against the City of Jacksonville, Florida.

## MOTION FOR MORE DEFINITE STATEMENT

6. To enter an order directing Petitioner to file a More Definite Statement of the following matters:

(1) When did he make the request to postpone the hearing to a later date, and a different time, made to Respondent, Clyde C. Cannon, as alleged by Petitioner in the last Paragraph of Paragraph 5 of the Second Amended Complaint?

(2) a. What action and recommendation did the Committee on Public Service and Motor Transportation of the City Council take and make on his application?

(b) The action of the City Council thereon.

s/ William M. Madison
(William M. Madison)

s/ Claude L. Mullis
(Claude L. Mullis)

s/ William Lee Allen
(William Lee Allen)

Attorneys for City of Jacksonville
and Clyde C. Cannon
1103 City Hall
Jacksonville, Florida 32202

I hereby certify that a copy hereof has been furnished WILLIAM BERNARD LANGLEY, 5819 Moncrief Road, Jacksonville, Florida, by mail this 27th day of June, 1966.

s/ William Lee Allen
Attorney

[1966, June 27]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA.
JACKSONVILLE DIVISION.

NO. 66-187-Civ-J

WILLIAM BERNARD LANGLEY, )

Petitioner, )

-vs- )

CITY OF JACKSONVILLE, FLORIDA, )
CLYDE C. CANNON, R. B. BURROUGHS,
JR., BARNEY F. COBB, ELBERT H. )
HENDRICKS, CECIL F. LOWE, W. O.
MATTOX, JR., LAVERN R. REYNOLDS, )
ROBERT R. ROBERTS, LEMUEL SHARP,
Members of the City Council of )
Jacksonville, Florida, and NEW DEAL
CAB COMPANY, a Florida Corporation, )

Respondents. )

)

## MOTIONS TO DISMISS

1. Defendant New Deal Cab Company moves the Court to dismiss the amended complaint for lack of subject matter jurisdiction.

2. Defendant New Deal Cab Company moves the Court to dismiss the amended complaint for failure to comply with Rule 8(a), Federal Rules of Civil Procedure.

3. Defendant New Deal Cab Company moves the Court to dismiss the amended complaint for failure to state a claim for relief against this defendant.

## MOTIONS TO STRIKE

1. Defendant New Deal Cab Company moves the Court to strike from the amended complaint the second subparagraph of paragraph 5, the first sentence of paragraph 6 of the complaint, and sub-subparagraphs (b), (c) and (h) of the third subparagraph of paragraph 6 on the grounds that it affirmatively appears from said amended complaint that the notice, date and time of alleged public hearing were lawful and within the administrative discretion of the City Council, and that said allegations are irrelevant, immaterial and insufficient as a matter of law.

2. Defendant New Deal Cab Company moves the Court to strike from the amended complaint the last sentence of the first subparagraph of paragraph 6 and the entire second subparagraph of paragraph 6 on the grounds that said allegations are immaterial, irrelevant, and insufficient as a matter of law in that said alleged facts, even if true, are not inconsistent with proper and legal action by the City Council.

3. Defendant New Deal Cab Company moves the Court to strike from the amended complaint sub-subparagraphs (d), (e), (f), (g) and (i) of the third subparagraph of paragraph 6 on the grounds that said allegations are mere conclusions wholly unsupported by the factual allegations of the complaint.

4. Defendant New Deal Cab Company moves the Court to strike from the amended complaint paragraph 7 thereof on the grounds that the allegations thereof are immaterial, irrelevant, insufficient as a matter of law, and contradicted by the express provisions of the ordinance quoted by plaintiff in paragraph 3 of the amended complaint. Alternatively, said defendant moves to strike the fifth and sixth subparagraphs of paragraph 7 of the amended complaint

on the grounds that the allegations thereof are argumentative and mere conclusions unsupported by the factual allegations of the complaint.

5. Defendant New Deal Cab Company moves the Court to strike from the amended complaint paragraphs 8 and 9 thereof, because the allegations thereof are immaterial, irrelevant, and insufficient as a matter of law.

6. Defendant New Deal Cab Company moves the Court to strike from the amended complaint paragraph 10 and sections (a) and (b) of the prayer of said amended complaint on the grounds that the allegations thereof are immaterial, irrelevant, and insufficient as a matter of law.

ROGERS, TOWERS, BAILEY, JONES & GAY

Robert S Smith

Robert S. Smith
1300 Florida Title Building
Jacksonville, Florida 32202

Attorneys for Defendant New Deal Cab
Company

I DO CERTIFY that a copy hereof has been furnished to William Bernard Langley, Petitioner, 5819 Moncrief Road, Jacksonville, Florida 32209; William H. Madison, Esq., attorney for City of Jacksonville, Florida, 1103 City Hall, Jacksonville, Florida, and John Paul Howard, Esq., attorney for R. R. Whitmore, 205 Florida Title Building, Jacksonville, Florida 32202, by United States mail, this 27th day of June, 1966.

Robert S Smith

Attorney

/

[1966, June 27]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA.
JACKSONVILLE DIVISION.

NO. 66-187-Civ-J

WILLIAM BERNARD LANGLEY,
Petitioner,
-vs-
CITY OF JACKSONVILLE, FLORIDA, CLYDE C. CANNON, R. B. BURROUGHS, JR., BARNEY F. COBB, ELBERT H. HENDRICKS, CECIL F. LOWE, W. O. MATTOX, JR., LAVERN R. REYNOLDS, ROBERT R. ROBERTS, LEMUEL SHARP, Members of the City Council of Jacksonville, Florida, and NEW DEAL CAB COMPANY, a Florida Corporation,
Respondents.

## BRIEF OF DEFENDANT NEW DEAL CAB COMPANY IN SUPPORT OF MOTIONS TO DISMISS AND MOTIONS TO STRIKE

### I. The Motion To Dismiss For Lack Of Subject Matter Jurisdiction Should Be Granted.

Plaintiff alleges the following as the basis for jurisdiction of this Court:

> ". . . Jurisdiction is conferred on this Court by Title 28, United States Code, Judiciary and Judicial Procedure, § 1343; it appearing that this controversy came on under color of ordinance."

28 U.S.C., sec. 1343, provides:

> "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
>
> "(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;
>
> "(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;
>
> "(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;
>
> "(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

As appears from the plaintiff's allegation that "this controversy came on under color of ordinance" and from the fact that section 1985 of Title 42 on its face is not applicable to this type of case, plaintiff's jurisdiction is based on section 1343(3) of Title 28 and section 1983 of Title 42. Section 1343(3) confers upon the District Courts jurisdiction to hear cases arising under 42 U.S.C., sec. 1983.[1] Sec. 1983 of Title 42 provides:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other

---

[1] See Fisher v. City of New York, 208 F.Supp. 681 (S.D.N.Y. 1962), aff'd. 312 F.2d 890 (2d Cir. 1963), wherein the court said: "The plaintiff's action is based on 28 U.S.C. sec. 1343(3), which section provides the jurisdictional basis for claims under 42 U.S.C.A. sec. 1983..."

> person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

The courts have universally held that the word "person" as used in 42 U.S.C., sec. 1983, does not include private individuals or corporations. As to defendant New Deal Cab Company, therefore, this Court is without jurisdiction.

In Spampinato v. M. Breger & Co., 166 F.Supp. 33 (E.D.N.Y. 1958), aff'd. 270 F.2d 46 (2d Cir. 1959), the court said:

> "The plaintiff has quite misconceived the scope of the Civil Rights Statute. The Civil Rights Act was enacted to enforce the Fourteenth Amendment to the Constitution, which amendment is directed only to state action. The invasion by individuals is not within the purview of said amendment. The jurisdiction conferred upon the federal district courts is similarly limited."

In affirming the above case the United States Court of Appeals emphasized the fact that section 1983 does not cover private persons:

> "Section 1983 of the Civil Rights statutes preserves constitutional rights from infringement by persons who act under federal or state authority, not private citizens who commit wrongful acts, however wilful and malicious they may be. See Collins v. Hardyman, 341 U.S. 651, 71 S.Ct. 937, 95 L.Ed. 1253. . ."

Where it is held that a party, like New Deal Cab Company in the instant case, is not a "person" within the meaning of the above mentioned civil rights statute, the District Court is without jurisdiction. See Fisher v. City of New York, 208 F.Supp. 681 (S.D.N.Y. 1961), aff'd. 312 F.2d 890 (2d Cir. 1963).

Alternatively, it has been held in a very recent case that where a party is not a "person" within the meaning of the said Civil Rights Act, a complaint based thereon does not state a cause of action. U.S. v. Illinois, 343 F.2d 120 (7th Cir. 1965).

In the case of Williams v. Yellow Cab Co. of Pittsburg, Pa., 200 F.2d 302 (3rd Cir. 1952), cert. den. 346 U.S. 840, the court expressed the rule as follows:

> "The second basis upon which jurisdiction is claimed is Section 1343 of Title 28, United States Code, commonly known as the Civil Rights Act,... The Civil Rights Act was originally enacted to enforce the Fourteenth Amendment. It has long been settled that the Fourteenth Amendment is directed only to state action and that the invasion by individuals of the rights of other individuals is not within its purview. It necessarily follows that the jurisdiction conferred upon the federal district courts by Section 1343 is similarly limited and that redress for the invasion by an individual of the civil rights of another must be sought in the state courts,..."

For the above reasons, defendant New Deal Cab Company respectfully submits that the amended complaint should be dismissed for lack of jurisdiction over the subject matter.[1]

## II. The Motion To Dismiss For Failure To Comply With Rule 8(a), Federal Rules of Civil Procedure, Should Be Granted.

In violation of Rule 8(a) of the Federal Rules of Civil Procedure, plaintiff fails to set forth a "short plain statement of the claim showing that the pleader is entitled to relief." To the contrary, plaintiff combines and intermixes in one count charges of violation of constitutional rights, conspiracy, writ of mandamus, mental anguish and damge to emotional state of well-being, arbitrary and illegal action of a public body, illegal combination and anti-trust violation, claims for both punitive and compensatory damages, illegal operation of taxicabs, and declaratory relief. Interspersed in that one count are alleged violations of federal constitution, federal statutes, state statutes, and city ordinance. Joined together are such things as damage to emotional state of well-being resulting from violation of Fourteenth Amendment rights (second subparagraph of paragraph 10 of amended complaint). Defendant submits that it is impossible to frame a logical and adequate answer to the amended complaint in its present form and that same should be dismissed. See Corcoran v. Yorty, 347 F.2d 222 (9th Cir. 1965) (affirming lower court's order dismissing civil rights complaint for failure to comply with Rule 8 by alleging a "short and plain statement of the claim.")

---

[1] The amended complaint alleges violations of the Fourteenth Amendment without expressly claiming jurisdiction thereunder. Both from the wording of the Fourteenth Amendment and from the federal court decisions (e.g., Williams v. Yellow Cab Co. of Pittsburg, Pa., supra), it is clear that said Amendment does not relate to causes of action against private individuals or corporations. Plaintiff cannot generate federal jurisdiction merely by referring to the Constitution. See, Abernathy v. Patterson, 295 F.2d 452 (5th Cir. 1961), cert. den. 368 U.S. 986.

## III. The Motion To Dismiss For Failure To State A Claim For Relief Against This Defendant Should Be Granted.

A review of the amended complaint shows that plaintiff has failed to do more than string together conclusions unsupported by specific allegations of fact. It is a well recognized principle of constitutional law that in order to support a cause of action based on deprivation of constitutional rights the complainant must allege highly specific facts in support of his claim.

In the very recent case of Kregger v. Posner, 248 F.Supp. 804 (E.D. Mich. 1966), the court stated the rule to be:

> "...In an action for damages under the Civil Rights Act, the plaintiff must allege highly specific facts. It is not sufficient to state conclusionary

allegations without support in the facts alleged..."

In a somewhat more detailed analysis, Chief Justice Stone in his opinion in Snowden v. Hughes, 321 U.S. 1 (1943), said:

> "The lack of any allegations in the complaint here, tending to show a purposeful discrimination between persons or classes of persons is not supplied by the opprobrious epithets 'wilful' and 'malicious' applied to the Board's failure to certify petitioner as a successful candidate, or by characterizing that failure as an unequal, unjust, and oppressive administration of the laws of Illinois. These epithets disclose nothing as to the purpose or consequence of the failure to certify, other than that petitioner has been deprived of the nomination and election, and therefore add nothing to the bare fact of an intentional deprivation of petitioner's right to be certified to a nomination to which no other has been certified. . . Such allegations are insufficient under our decisions to raise any issue of equal protection of the laws or to call upon a federal court to try questions of state law in order to discover a purposeful discrimination in the administration of the laws of Illinois which is not alleged."

Defendant New Deal Cab Company submits that plaintiff has, in fact, engaged only in "opprobrious epithets" and conclusions of law.

The United States Circuit Court of Appeals for the Fifth Circuit has likewise upheld this rule of specificity in allegations of fact when Chief Judge Hutcheson said in McGuire v. Todd, 198 F.2d 60 (5th Cir. 1952):

> "...[W]e disregard, as mere conclusions, the loose and general, the factually unsupported, characterizations of the complained of acts of the defendants, as malicious, conspiratorial and done for the purpose of depriving plaintiffs of their constitutional rights; that the things that defendants are alleged to have done, as distinguished from the conclusions of the pleaders with respect to them, do not constitute a deprivation of the civil rights of the plaintiffs, do not give rise to the cause of action claimed;..." See also, Abernathy v. Patterson, 295 F.2d 452 (5th Cir. 1961), cert.den. 368 U.S. 986.

allegations without support in the facts alleged..."

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The only relief sought by plaintiff is (1) a new hearing by the City Council, over which defendant New Deal Cab Company has no power, (2) punitive damages for which there is no support in even the general allegations of the complaint, and (3) compensatory damages, for which no basis is laid other than mental anguish alleged in paragraph 10 of the amended complaint as resulting from violation of the plaintiff's constitutional rights. There is no support in Florida law for recovery of such damages. See 9 Fla.Jur., Damages, Secs. 88 and 89; Dunahoo v. Bess, 146 Fla. 182, 200 So. 541 (1941).

The general conclusions alleged as to conspiracy, illegal combination, trusts, violation of ordinance, and other diverse matters do not cure the above defects. For example, (1) plaintiff assumes without authority that "interlocking directorship" equals illegal trust; (2) plaintiff assumes that defendant City Council has no administrative discretion to set a time of hearing; (3) plaintiff assumes that denial of an application necessarily implies failure to consider matters presented in support of it; (4) plaintiff assumes power and inclination on the part of the judiciary to invade the administrative discretion of a public agency without a showing of fraud or abuse of discretion by that agency.

By reason of the above, defendant New Deal Cab Company submits that the motion to dismiss for failure to state a claim for relief should be granted.

## IV. The Motions To Strike Should Be Granted.

1. This defendant's motion to strike the second subparagraph of paragraph 5, the first sentence of paragraph 6, and sub-subparagraphs (b), (c) and (h) of the third subparagraph of paragraph 6 of the amended complaint should be granted because all of said allegations are based on the assumption that a four-day (five from date of mailing) notice of hearing for a public hearing set at

10:00 o'clock a.m. on a working day is arbitrary and unreasonable. Nothing in the ordinance quoted by plaintiff makes it so appear. Clearly this falls within the proper exercise of administrative discretion by an administrative agency. The Florida courts have held that "every reasonable presumption must be indulged in favor of the validity" of such administrative actions. See Florida Citrus Commission v. Golden Gift, Inc., 91 So.2d 657 (Fla. 1956).

2. This defendant's motion to strike the last sentence of the first subparagraph of paragraph 6 and the entire second subparagraph of paragraph 6 of the amended complaint should be granted on the grounds that these allegations relate to (1) the alleged presentation of a petition to the City Council signed by certain unidentified persons, and (2) the presence at the hearing of interested persons opposing the plaintiff's application, such as other taxicab drivers, other taxicab owners, etc. Defendant submits that on their face these alleged facts, even if true, do not even remotely suggest that the action of the defendant City Council was illegal--or even questionable. The allegations merely relate to what apparently was part of the information presented for consideration by the hearing.

3. This defendant's motion to strike from the amended complaint sub-subparagraphs (d), (e), (f), (g) and (i) of the third subparagraph of paragraph 6 should be granted because it affirmatively appears from the amended complaint that these are but general conclusions unsupported by the factual allegations of the complaint. The Fifth Circuit has held in a civil rights case that "sweeping conclusions of the complaint cannot be accepted unless...well supported by specific factual averments." Abernathy v. Patterson, 295 F.2d 452 (5th Cir. 1961), cert.den. 368 U.S. 986.

4. The grounds for defendant's fourth motion to strike are set forth in said motion.

5. The motion to strike paragraphs 8 and 9 of the amended complaint should be granted because the generally alleged conclusions as to a "conspiracy" relating to a "trust," "combination," or "monopoly" (1) do not recognize the power in a Florida municipality to regulate public conveyances by franchise or otherwise, and (2) do not meet even the basic requirements as to pleading a claim of conspiracy.

Conspiracy cannot be made the subject of a civil action under Florida law unless something is alleged and proved which, without the conspiracy, would give rise to a cause of action. Liappas v. Augoustis, 47 So.2d 582 (Fla. 1950); 6 Fla.Jur., Conspiracy, Sec. 13. In Napper v. Krentzman, 102 So.2d 633 (Fla.App. 1958), the appellate court affirmed an order dismissing a complaint seeking to allege a conspiracy, saying in part:

> "The gist of a civil action for conspiracy is not the conspiracy itself, but the civil wrong which has been done pursuant to the conspiracy which results in damage to the plaintiff. Liappas v. Augoustis, Fla. 1950, 47 So.2d 582; Loeb v. Geronemus, Fla. 1953, 66 So.2d 241."

Accord, Romero v. Campoamor, 133 So.2d 570 (Fla.App. 1961). In this case, the plaintiff has alleged no cause of action or claim for relief which would exist apart from conspiracy. Generally allegations of conspiracy do not cure this defect.

6. This defendant's motion to strike paragraph 10 of the amended complaint and sections (a) and (b) of the prayer for relief should be granted because there is no authority under Florida law or other law which allows recovery of punitive or compensatory damages allegedly resulting from violation of constitutional rights. See Dunahoo v. Bess, 146 Fla. 182, 200 So. 541 (1941); 9 Fla.Jur., Damages, Sec. 89. Even in traditional tort cases, no recovery can

be had for mental pain and suffering, unaccompanied by physical injuries or malice. 9 Fla.Jur., Damages, Sec. 88. In this case there is no allegation of physical injury or malice. There is no authority to support damages for mental anguish allegedly caused by alleged deprivation of constitutional rights.

### V. Conclusion

For the reasons above stated, defendant's motions should be granted.

ROGERS, TOWERS, BAILEY, JONES & GAY

Robert S Smith
Robert S. Smith
1300 Florida Title Building
Jacksonville, Florida 32202

Attorneys for Defendant New Deal Cab Company

I DO CERTIFY that a copy hereof has been furnished to William Bernard Langley, Petitioner, 5819 Moncrief Road, Jacksonville, Florida 32209; William H. Madison, Esq., attorney for City of Jacksonville, Florida, 1103 City Hall, Jacksonville, Florida, and John Paul Howard, Esq., attorney for R. R. Whitmore, 205 Florida Title Building, Jacksonville, Florida 32202, by United States mail, this 27th day of June, 1966.

Robert S Smith
Attorney

[1966, July 1]

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY,

Petitioner,

-vs-

CITY OF JACKSONVILLE,
FLORIDA, CITY COUNCIL
OF JACKSONVILLE, FLORIDA, et al.

Respondents.

CIVIL ACTION NO. 66-187-CIV-J

## INTERROGATORIES TO RESPONDENT

TO: New Deal Cab Company, A Florida Corporation
c/o Rogers, Towers, Bailey, Jones & Gay
Attorneys For New Deal Cab Company
Florida Title Building
Jacksonville, Florida

In accordance with Rule 33, Federal Rules of Civil Procedure, you are required within 15 days of service hereof, to answer separately, fully, in writing, and under oath the following interrogatories:

1. Did you notify, or cause to be notified, any taxi-cab drivers for New Deal and/or Lincoln Cab Company of a public hearing to be held December 14, 1965, in the Jacksonville City Council Chambers?

2. If your answer to question number one (1) is affirmative, were all of the New Deal-Lincoln drivers notified, or were certain drivers notified?

3. If your answer to question number one (1) is affirmative, was a written announcement posted so that all drivers could read the notice of public hearing?

4. If your answer to question number three (3) is negative, state why this was not done.

5. Were drivers notified of the public hearing orally?

6. If your answer to question number five (5) is

affirmative, were drivers notified of the public hearing orally in groups or individually?

7. If drivers were notified of the public hearing orally, in groups, were they called into the company office for this purpose?

8. If drivers were notified orally and individually, of the aforementioned public hearing, were they notified individually in the company office?

9. Were any driver or drivers offered money or credit to be applied toward their car rental fee, or running time, to appear at the aforementioned public hearing?

10. If your answer to question number nine (9) is affirmative, were any of these drivers who were offered or promised money or monetary credti toward car rental fees drivers assigned to the day shift on the date of the public hearing of December 14, 1965?

11. If your answer to question number nine (9) is affirmative, were any of these aforementioned drivers assigned to the night shift on the date of said hearing?

12. Did you pay, or cause to be paid, money to any driver or drivers who appeared at the public hearing of December 14, 1965?

13. If your answer to question number twelve (12) is affirmative, did you pay, or cause to be paid, money to any driver or drivers assigned to the night shift on the date of said hearing, who appeared at said public hearing of December 14, 1965?

14. Did you credit, or cause to be credited, monetary credit toward the car rental fee or running time of any driver or drivers who appeared at the aforementioned public hearing?

15. If your answer to question number fourteen (14) is affirmative, did you credit, or cause to be credited, monetary credit toward the said car rental fee or running time of any driver or drivers assigned to the night shift on the date of said hearing, who appeared at said public hearing of December 14, 1965?

16. If your answer to question number twelve (12) is affirmative, give the name and address, amount of money paid to each driver and indicate whether such driver was assigned to the day shift or night shift for drivers on the date of said hearing.

17. If your answer to question number fourteen (14) is affirmative, give the name and address, amount ~~of~~ credited toward the car rental fee for each driver and indicate whether such driver was assigned to the day shift or night shift on the date of said hearing.

18. If your answer to question number twelve (12) is affirmative, on what date or dates were the payments, as indicated in question number twelve (12) made?

19. If your answer to question number fourteen (14) is affirmative, on what date or dates were the credits, as indicated in question number fourteen (14) given?

20. If your answer to question number twelve (12) is affirmative, at any time prior to, on the date of, or subsequent to the public hearing of December 14, 1965, were there records, vouchers, or ledgers kept by the company which would show the payment or said monies, as indicated in question number twelve (12)?

21. If your answer to question number fourteen (14) is affirmative, at anytime prior to, on the date of, or subsequent to the aforementioned public hearing, were there records, vouchers, or ledgers kept by the company which would show the giving of said credits, as indicated in question number fourteen (14)?

22. If your answer to question number twenty (20) is affirmative, are such records, as indicated in question number twenty (20), on hand and intact?

23. If your answer to question number twenty-one (21) is affirmative, are such records, as indicated in question number twenty-one (21), on hand and intact?

24. If your answer to question number twenty-two (22) is negative, what disposition has been made of these aforementioned records?

25. If your answer to question number twenty-three (23) is negative, what disposition has been made of these aforementioned records?

26. If your answer to question number twelve (12) is affirmative, give the name and address of any person or persons who issued money to aforementioned drivers as indicated in question number twelve (12).

27. If your answer to question number fourteen (14) is affirmative, give the name and address of any person or persons who arranged car rental credit as indicated in question number fourteen (14).

28. Give the name and address of all persons known to you to have knowledge of one or more facts or circumstances relevant to this controversy.

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

## CERTIFICATE OF MAILING

I hereby certify that on July 1st , 1966 I served by mail one copy of the foregoing Interrogatories To Respondent upon William M. Madison, Attorney for the City of Jacksonville, Florida, at City Hall, Jacksonville, Florida, and upon Rogers, Towers, Bailey, Jones and Gay, Attorneys for New Deal Cab Company, at Florida Title Building, Jacksonville, Florida.

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

[1966, July 7]

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY, )
Petitioner, )
-vs- ) CIVIL ACTION NO. 66-187-CIV-J
CITY OF JACKSONVILLE, )
FLORIDA, ~~CITY COUNCIL OF JACKSONVILLE, FLORIDA~~, et al. )
Respondents. )

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## MEMORANDUM BRIEF IN OPPOSITION TO MOTION TO QUASH AND MOTION TO DISMISS

Pursuant to the provisions of Rule 7 (B), General Rules of The United States District Court For The Middle District of Florida, William Bernard Langley, Petitioner in the above styled cause, files herewith his Memorandum Brief In Opposition To Motion To Quash and Motion To Dismiss, filed by Respondents: R. B. Burroughs, Jr., Barney F. Cobb, Elbert H. Hendricks, Cecil F. Lowe, W. O. Mattox, Jr., Lavern R. Reynolds, Robert R. Roberts and Lemuel Sharp.

### I Motion To Quash Service Should be Denied

Aforementioned Respondents have filed a motion for an Order quashing service against them and dismissing action against them for lack of jurisdiction, on the grounds that the second amended complaint was not served on them.

Petitioner delivered to the United States Marshal, Jacksonville, Florida, copies for each and all of said respondents together with proper summons for each and all Respondents named herein. Service in accordance with Rule 1.3 (d), Florida Rules of Civil Procedure was made upon each and all aforementioned Respondents on June 27, 1966. It is held that service in compliance with state law is valid to give Federal District Court personal jurisdiction. O'Shatz v. Bailey. (D. C. Md. 1963), 220 F. Supp. 444.

Respondents mailed their motions on June 27, 1966, and said motions were received by Petitioner on June 28, 1966.

It appearing that there is no material issue before the Court in the foregoing matter, Petitioner respectfully submits that Respondents Motion To Quash should be denied.

## II Motion To Dismiss Should Be Denied

Respondents have filed a Motion To Dismiss on the grounds that Petitioner has failed to state a cause of action for which relief can be granted.

It seems improper that Respondents would claim that they have not been served with a copy of the second amended complaint and summons, yet they file a responsive pleading to a complaint they allege to have not received......But putting that aside, Petitioner has prayed for relief, against these Respondents joined with the City of Jacksonville, Florida, that is within the jurisdiction and purview of this Court upon a determination of merit in this case.

Respondents are indispensable parties to this action, and are joined with Respondent City of Jacksonville, Florida.

Petitioner will not burden the Court with needless repetition, and respectfully invites attention to remarks in Petitioner's brief in opposition to Respondents City of Jacksonville and Clyde C. Cannon's Motion To Dismiss, Motion To Strike, and Motion For More Definite Statement.

William Bernard Langley

William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

## CERTIFICATE OF MAILING

I hereby certify that on July 7, 1966 I served by mail one copy of the foregoing Memorandum Brief In Opposition To Motion To quash and Motion To Dismiss upon William M. Madison, Attorney for the City of Jacksonville, Florida, at City Hall, Jacksonville, Florida, and upon Rogers, Towers, Bailey, Jones and Gay, Attorneys for New Deal Cab Company, at Florida Title Building, Jacksonville, Florida.

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

[1966, July 7]

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY, )
Petitioner, )
-vs- ) CIVIL ACTION NO. 66-187-CIV-J
CITY OF JACKSONVILLE, )
FLORIDA, ~~CITY COUNCIL~~ )
~~OF JACKSONVILLE,~~ FLORIDA, et al. )
Respondents. )

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## MEMORANDUM BRIEF IN OPPOSITION TO MOTION TO DISMISS, MOTION TO STRIKE, AND MOTION FOR MORE DEFINITE STATEMENT

In accordance with Rule 7 (B), General Rules of the United States District Court for the Middle District of Florida, Petitioner, William Bernard Langley files herewith his Memorandum Brief In Opposition To Motion To Dismiss, Motion To Strike, And Motion For More Definite Statement filed by Respondents City of Jacksonville and Clyde C. Cannon.

### I. Motion To Dismiss Should Be Denied

Respondents City of Jacksonville and Clyde C. Cannon have filed motion to dismiss on the grounds that the Court lacks jurisdiction over the subject matter, that Petitioner has failed to state a claim, and that Rule 8 (a) (2) has not been complied with.

1. Opposition to lack of jurisdiction as alleged by Respondents:

Petitioner has quite properly petitioned this Honorable Court for declaratory judgement as to the violation of his rights under the Fourteenth Amendment to the Constitution of the United States, and has properly invoked Section 1343 (3) of Title 28, U.S.C. as the basis for federal jurisdiction.....It appears that the controversy involving these Respondents comes on under color of state law; the courts having held that any wrongful acts performed by any governmental body or official, state or local, is under color of state law.

It is held that Section 1343 of Title 28, U.S.C., commonly known as the Civil Rights Act, was originally enacted to enforce the Fourteenth Amendment. *Williams v. Yellow Cab Co. of Pittsburg, Pa.*, 200 F. 2d 302 (3rd Cir. 1952), Cert. den. 346 U.S. 840.

In *Spampinato v. M. Breger & Co.*, 166 F. Supp. 33 (E. D. N. Y. 1958), aff'd. 270 F. 2d 46(2d Cir. 1959), the court said, in part:

> "The Civil Rights Act was enacted to enforce the Fourteenth Amendment to the Constitution..."

It therefore appears to be quite obvious that the Court has jurisdiction over subject matter and that sufficiency and merit would be the question rather than jurisdiction.

Respondents question the jurisdiction of this Court in the matter of punitive and compensatory damages prayed for by Petitioner. It is to be pointed out that where action is based on 28 U.S.C. sec. 1343 (3), this section provides the jurisdictional basis for claims under 42 U.S.C. sec. 1983.

In *Fisher v. City of New York*, 208 F. Supp. 681 (S.D.N.Y. 1962), aff'd. 312 F 2d 890 (2d Cir. 1963) the Court said:

> "The plaintiff's action is based on 28 U.S.C. sec. 1343 (3), which section provides the jurisdictional basis for claims under 42 U.S.C.A. sec. 1983..."

As to Respondent's allegation that Petitioner has failed to show any right, privilege or immunity that has been violated--- Petitioner has asserted many times that the gross abuse of the discretionary power of the City of Jacksonville, by and through its City Council, and other matters previously stated, have interfered with the rights guaranteed to Petitioner by the Fourteenth Amendment to the Constitution of the United States.

Petitioner would show that Federal Courts are reluctant to grant motions to dismiss for lack of jurisdiction where causes of action, superficially at least, appear to be grounded on federal law or the Constitution. Hill's Jitney Service, Inc. v. Stiltz, Inc., (D. C. Del. 1965), 238 F. Supp. 881.

2. Opposition to failure to state a claim as alleged by Respondents:

Respondents go into detail in a matter that has no bearing upon this case, citing Mosher v. Beirne, (C. A. Mo. 1966) 357 F. 2d 638. This case has no similarity to the case at bar, in that Petitioner did not bring suit because he had been denied taxi permits, Petitioner has had no place padlocked and Petitioner has not challenged the validity of the ordinances of the City of Jacksonville in that the controversy at bar is not concerned with the validity, per se, of said ordinances... And the case at bar is not concerned with natural rights, but comes on as a question of violation of Civil rights.

Petitioner has stated a claim that is within the jurisdiction and purview of this Court to grant the relief prayed for should the Court, in its sound discretion, determine that Petitioner is entitled to relief for which he has prayed.

Further, it is held that for the purpose of a motion to dismiss a complaint for failure to allege a cause of action, the Court must assume that the allegations of the complaint are true and must address itself solely to the legal sufficiency of their significance. Hammonds v. Aetna Cas. & Sur. Co., (D. C. Ohio 1965) 237 F. Supp. 96.; a similiar ruling in U.S. v. Mississippi, reported at 85 S. Ct. 808, 380 U.S. 128, 13 L. Ed. 2d 717.

3. Opposition to non-compliance with Rule 8 (a) (2), Federal Rules of Civil Procedure, as alleged by Respondents:

Petitioner denies the allegation that he has not complied with Rule 8 (a) (2). Petitioner says that he has complied with the requirements of Rule 8 (a) (2) in the manner best known to him, appearing pro se. Cases should be decided upon their merits rather than upon technical deficiencies in pleadings. Lomartira v. American Auto Ins. Co., (D. C. Conn. 1965), 245 F. Supp. 124.

We find a further application of this in the opinion in the case of Byrd v. Bates, 5 Cir., 220 F. 2d 480, 482, wherein the court said:

> "As we said in John Walker & Sons v. Tampa Cigar Co. 5 Cir., 197 F. 2d 72, 73; Rule 8 of the Federal Rules of Civil Procedure, 28 U.S.C.A., provides that a pleading shall set forth a short, plain statement of the claim showing that the pleader is entitled to relief...absent from this rule is the old requirement of common law and code pleading that the pleader set forth "facts" constituting a cause of action. It is also elementary that a complaint is not subject to dismissal unless it appears to a certainty that the plaintiff cannot possibly be entitled to relief under any set of facts which could be proved in support of its allegations. Even then, a Court ordinarily should not dismiss the Complaint except after affording every opportunity to the plaintiff to state a claim upon which relief might be granted."

Foregoing quote cited with approval in the case of Black v. First Nat'l Bank (C. A. 5. 1958) 255 F. 2d 373.

We find further that pleadings prepared by a laymen should be liberally construed. Downing v. New Mexico State Supreme Court, (C.A.R.R. 1964), 339 F. 2d 435.

Rights of litigants are decided on facts placed before the Court. The function of pleadings is merely to furnish a vehicle for getting facts to court in an orderly fashion. Todd v. Nello L. Teer Co., (C. A. Fla. 1962), 308 F. 2d 397.

Under these rules, the technical niceties of pleadings should not be exalted, but rather the sufficiency of a complaint should be tested by whether it gives fair notice of complainant's Claim to the opposing party. Watsco, Inc. v. Henry Value Co., (D. C. N. Y. 1964), 232 F. Supp. 38.

4. Opposition to failure to join indispensable parties, as alleged by Respondents:

Respondents allege that certain members of the City Council of Jacksonville, Florida, are indispensable parties to this action, but have not been made parties to action because of lack of service of process upon them.

Petitioner refutes this and says that process was served upon each and all of the Respondents, as named: R. R. Burroughs, Jr., Barney F. Cobb, Elbert H. Hendricks, Cecil F. Lowe, W. O. Mattox, Jr., Lavern R. Reynolds, Robert R. Roberts and Lemuel Sharp.

Aforementioned Respondents, members of City Council of Jacksonville, were served with process on June 27, 1966. Said Respondents filed motions which appear from their certificate of mailing to have been mailed on June 27, 1966. However, said Respondents filed a responsive pleading to a process they allege to have not received. It appears that Respondents have been properly served with process.

## II. Motion To Strike Should Be Denied

Respondents, City of Jacksonville and Clyde C. Cannon, have moved the Court to strike from the Second Amended Complaint the following allegations, on the grounds that they are redundant, immaterial, impertinent and scandalous:

(a) In the title, the words "AND WRIT OF MANDAMUS".

(b) All of the introductory matter on Page 1 and Paragraphs (a), (b), and (c) at the top of Page 2, and the prayer thereof.

(c) The second paragraph of Paragraph 5.

(d) Paragraph 6.

(e) Paragraph 7; on the further ground that ordinances must be pleaded in haec verba.

(f) Paragraph 8.

(g) Paragraph 9.

(h) Paragraph 10, and so much of the prayer which seeks any action to be taken by any other members of the City Council, other than Respondent, CLYDE C. CANNON, and that portion praying ~~any~~ For damages against the City of Jacksonville, Florida.

It is held that allegations in a complaint would not be striken as scandalous and impertinent, where challenged material, under proper judicial supervision, could not harm defendant. Rhodes v. Meyer, (D. C. Neb. 1963) 225 F. Supp. 80 aff'd. 334 F. 2d 709, Cert. dend. 85 S. Ct. 263, 379 U. S. 915, 13 L. Ed. 2d 186.

Aforementioned Respondents show no good and valid reason why any of the foregoing allegations should be striken... Certainly the words "And Writ Of Mandamus" are not impertinent and scandalous as alleged by Respondents. Petitioner has a perfect right to petition for Writ of Mandamus as an ancillary proceeding where jurisdiction is acquired on other grounds.

It has been decided that federal District Court has power to issue orders in the nature of mandamus only where it is done as an ancillary proceeding in aid of jurisdiction acquired on other grounds, and has no general original powers to issue such orders where they are the only relief sought. NewaRks Morning Ledger Co. v. Republican Co., (D. C. Mass. 1960) 188 F. Supp. 813.

As to Respondents request to have striken paragraph 7, Second Amended Complaint; Petitioner says that ordinances were pleaded in haec verba. In haec verba is translated to mean; shown as seen, or written verbatum. Or a liberal interpretation could be; present for view as actually written.

Petitioner has shown relevant ordinances in haec verba, and has referred in subsequent portions of his amended complaint to these ordinances. It may be that Petitioner did not write, "in haec verba" each time he quoted these ordinances. If Respondents are referring to exhibits that were attached to and made a part thereof of said complaint, Petitioner says these were truly in haec verba, in that it appears that there is no better way to show written material as seen, or in haec verba, if you please, than to show a photoduplication of said written material.

Respondents move to have striken Paragraph 10, and so much of the prayer which seeks any action to be taken by any other members of the City Council, other than Respondent, CLYDE C. CANNON and that portion praying ~~any~~ For damages against the city Of Jacksonville, Florida.

However, Respondents show no reason for this except their apparent desire that this should be done...and this is not sufficient to grant motion to strike. As a matter of fact said Respondents make no attempt in their Supporting Brief to justify this portion being striken or to justify any portion IN Petitioners Second Amended Complaint, and candidly say:

> "Respondents will not burden the Court with further cites of authority hereunder, relying on the argument and authorities contained in Memorandum Brief filed herein previously."

This, of course, is insufficient to support their motions, in that the "argument and authorities contained in Memorandum Brief filed herein previously" by Respondents are not in point with many of Petitioners allegations in Second Amended Complaint sought to be striken by said Respondents.....particularly paragraphs 8 and 10, and that portion praying for damages against the City of Jacksonville, in that these allegations were not made prior to the filing of the Second Amended Complaint.

## III. Motion For More Definite Statement Should Be Denied

Respondents, City of Jacksonville and Clyde C. Cannon do not show, nor attempt to show, any sufficient reason for a Motion For More Definite Statement beyond the fact, perhaps, that they wish to use this as a discovery method.

Respondents have not alleged that the pleadings were so vague or ambiguous so to prevent them from being able to reasonably frame an answer, and it appears that this would be the only grounds for such motion.

It has been ruled that defendants' motion for more definite statement would be denied where pleading was not so vauge or ambiguous as to prevent defendants from being able to reasonably frame answer. Hoffman Motors Corp. v. Alfa Romeo., (S.P. A.D.C., N.Y. 1965), 244 F. Supp. 70.

It appears, therefore that Respondents wish to use this motion as a discovery method, and this is forbidden in that it is held that a motion for more definite statement is not intended to be used as a discovery procedure prior to issues being joined. Carolina Scenic Stages, Inc. v. Greyhound Corp., (D.C.S.C. 1965), 38 F.R.D. 313.

It appearing that Respondents, City of Jacksonville, Florida, and Clyde C. Cannon, have shown no good and justifiable reasons for Motion To Dismiss, Motion To Strike and Motion For More Definite Statement, Petitioner respectfully submits that aforementioned motions should be denied, and without hearing.

William Bernard Langley

William Bernard Langley, Peittioner
5819 Moncrief Road
Jacksonville, Florida

## CERTIFICATE OF MAILING

I hereby certify that on July 7th, 1966 I served by mail one copy of the foregoing Memorandum Brief In Opposition To Motion To Dismiss, Motion To Strike, And Motion For More Definite Statement upon William M. Madison, Attorney for the City Of Jacksonville, Florida, at City Hall, Jacksonville, Florida and upon Rogers, Towers, Bailey, Jones and Gay, Attorneys for New Deal Cab Company, at Florida Title Building, Jacksonville, Florida.

William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

[1966, July 7]

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY,

Petitioner,

-vs-

CITY OF JACKSONVILLE,
FLORIDA, CITY COUNCIL
OF JACKSONVILLE, FLORIDA, et al.

Respondents.

CIVIL ACTION NO. 66-187-CIV-J

## INTERROGATORIES TO RESPONDENT

TO: City of Jacksonville, Florida

C/O William M. Madison,
Attorney For City of Jacksonville, Florida
City Hall
Jacksonville, Florida

In accordance with Rule 33, Federal Rules of Civil Procedure, you are required within 15 days of service hereof, to answer separately, fully, in writing, and under oath the following interrogatories:

1. What action and recommendation did the Committee on Public Service and Motor Transportation of the City Council of Jacksonville, Florida take and make on the application of William Bernard Langley, following the public hearing of December 14, 1965?

2. What was the action of aforementioned City Council upon the action and recommendation of aforementioned Committee?

3. Section 42-23. City of Jacksonville, Florida Ordinance Code, adopted February 9, 1965, and effective March 21, 1965, relating to transferring permits: replacements or substitutions, is shown in haec verba:

> "Permits authorized by law to be issued for the operation of taxicabs, whether metered or unmetered, when issued, shall not be transferable without the approval of the Public Service and Motor Transportation Committee of the City Council, which approval, when given shall be in writing and filed of record in the office of the City Recorder; provided, however, that holders of such permits may make replacements and substitutions of metered taxicabs, provided the number of metered taxicabs operated does not exceed the number provided for in the permit already issued to any holder. (Ord. AA-269, § 1, 6-11-46; Code 1953, § 39-24)"

In light of the provisions of the above ordiance, do you have filed, of record in the office of the City Recorder, written approval by the Public Service and Motor Transportation Committee of the City Council of Jacksonville, Florida, for the transferring of taxi-cab permits from one Yellow Cab Company, a Florida Corporation, or from Yellow Cab Company, a dissolved Florida corporation, to Safety Cabs, Inc.?

4. If your answer to question number three (3) is affirmative, what is the date of aforementioned written approval indicated in question number three (3)?

5. If your answer to question number three (3) is affirmative, state the name of the chairman and other members of the Public Service and Motor Transportation Committee of the City Council at the time aforementioned written approval was given.

6. If your answer to question number three (3) is affirmative, is the aforementioned written approval bonafide and actually executed on the date as indicated?

7. If your answer to question number three(3) is negative, state the reason or reasons for this.

8. Do you have filed, of record in the office of the City Recorder written approval by the Public Service and Motor Transportation Committee of said City Council for the transferring of taxicab permits from Economy Cab Company of Jacksonville, a corporation, and Thrift Cabs, Inc., a corporation, to Safety Cabs, Inc., a corporation?

9. If your answer to question number eight (8) is affirmative, show the date of said written approval and state whether such approval is bonafide and actually executed on the date as indicated.

10. Do you have filed, of record in the office of the City Recorder, written approval by the Public Service and Transportation Committee of the City Council of Jacksonville, Florida, for the transfer of taxi-cab permits from Thrift Cabs, Inc., a corporation, trading and doing business in the style of Lincoln Cabs, to New Deal Cab Company, a Corporation?

11. If your answer to question number ten (10) is affirmative, give the date of such written approval, and state whether said written approval is bonafide and executed on the date as shown.

12. Was the granting of permits, originally, to Yellow Cab Company, a Corporation, authorized by ordinance?

13. If your answer to question number twelve (12) is affirmation, state in haec verba such ordinance, and cite where it may be found.

14. If your answer to question number twelve is negative, state by what authority said Yellow Cab Company was authorized to conduct a taxi-cab business in the City of Jacksonville, Florida.

15. Was Yellow Cab Company, at any time granted permits by City Council of Jacksonville, Florida?

16. If your answer to question number fifteen (15) is affirmative, how were these "permits" described, i., e., taxi-cab permits, livery (private or public) permits, etc.

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

## CERTIFICATE OF MAILING

I hereby certify that on July 7 , 1966 I served by mail one copy of the foregoing Interrogatories to Repsondent upon William M. Madison, Attorney for the City of Jacksonville, Florida, at City Hall, Jacksonville, Florida and upon Rogers, Towers, Bailey, Jones and Gay, Attorneys for New Deal Cab Company, at Florida Title Building, Jacksonville, Florida.

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

[1966, July 7]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

CIVIL ACTION NO. 66-187-Civ-J

WILLIAM BERNARD LANGLEY, )
Petitioner, )
vs. )
CITY OF JACKSONVILLE, FLORIDA, )
et al, )
Respondents. )

## OBJECTIONS TO INTERROGATORIES

Defendant, City of Jacksonville, files the following Objections to Interrogatories served on it by Plaintiff on July 7, 1966:

1. Defendant, City of Jacksonville, objects to each and every interrogatory served on it by Plaintiff on the grounds that all of said interrogatories are premature and wholly unnecessary in that they call for information reportedly relating to the Complaint filed herein, which Complaint, Motions to Dismiss and brief filed in support thereof by this defendant affirmatively and clearly show this Court to be without jurisdiction over the subject matter of this cause. Plaintiff has subsequent to propounding these interrogatories filed with the Court Motion for Leave to Amend his Complaint on the grounds that the Court does not have jurisdiction over the subject matter of this cause. All of said interrogatories are therefore immaterial and irrelevant.

2. Defendant, City of Jacksonville, further objects to said interrogatories numbered 1 through 16, a copy of which interrogatories are attached to these objections, on the ground that a municipality speaks through its public records and said information sought therein is equally available to Plaintiff. Said Defendant further objects to said interrogatories on the ground that they require a legal conclusion of Defendant as to what facts or circumstances are relevant to this controversy.

## NOTICE OF HEARING

TO: William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida 32209

John Paul Howard, Esquire
205 Florida Title Building
Jacksonville, Florida 32202
Attorney for R. R. Whitmore

Robert S. Smith, Esquire
Rogers, Towers, Bailey, Jones & Gay
1300 Florida Title Building
Jacksonville, Florida 32202
Attorneys for Defendant New Deal Cab Company

Please be advised that the undersigned attorney has written the Honorable William McRae, Judge of the above styled Court, and has requested that the aforesaid Objections to Interrogatories be set for hearing before said Court at the earliest possible date.

/s/ Claude L . Mullis
CLAUDE L. MULLIS
1103 City Hall
Jacksonville, Florida 32202
One of the Attorneys for the
Defendant City of Jacksonville

I HEREBY CERTIFY that a copy hereof has been furnished William Bernard Langley, Petitioner, 5819 Moncrief Road, Jacksonville, Florida, 32209; John Paul Howard, Esquire, Attorney for R. R. Whitmore, 205 Florida Title Building, Jacksonville, Florida, 32202; and Robert S. Smith, Esquire of Rogers, Towers, Bailey, Jones & Gay, Attorneys for Defendant New Deal Cab Company, 1300 Florida Title Building, Jacksonville, Florida, 32202; by United States mail, this 15th day of July, 1966.

/s/ Claude L. Mullis
Attorney

[1966, July 8]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

NO. 66-187-Civ-J

WILLIAM BERNARD LANGLEY,

Petitioner,

vs.

CITY OF JACKSONVILLE, FLORIDA,
CITY COUNCIL OF JACKSONVILLE,
FLORIDA, et al.,

Respondents.

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# BRIEF IN SUPPORT OF OBJECTIONS TO INTERROGATORIES AND MOTION FOR PROTECTIVE ORDER

## 1. Because It Is Apparent From The Complaint That The Court Lacks Jurisdiction Of The Subject Matter Of This Cause, It Is Unnecessarily Burdensome On Defendant To Require It To Answer The Interrogatories.

For the reasons set forth in the Brief In Support Of Motions To Dismiss previously filed by this defendant, the Court is without jurisdiction of the subject matter of this cause as to said defendant. To require this defendant to investigate and answer the interrogatories served by plaintiff on July 1, 1966 would be premature, burdensome and oppressive in view of the fact that the Court has substantial grounds to dismiss for lack of subject matter jurisdiction.

For the above reasons, it is respectfully submitted that the defendant's Objections To Interrogatories and Motion For Protective Order should be granted.

## II. The Interrogatories Are Objectionable For The Reasons Stated In Defendant's Objections to Interrogatories.

The Federal rules of Civil Procedure, Rule 33, expressly allow an objection to an interrogatory which calls for matters immaterial and irrelevant to the cause. Interrogatories numbers 1 through 27 relate to alleged actions of defendant New Deal

Cab Company regarding the presence of its employees at a public hearing. There being no allegation of the complaint to support the conclusion that the answers to these interrogatories will in any way relate to or generate a cause of action against said defendant, said interrogatories are irrelevant and immaterial.

Interrogatory number 28 is vague and calls for a legal conclusion by the defendant as to what is or what is not "relevant" to this controversy. The Federal Courts do not require a party to answer such interrogatories. See Stovall vs. Gulf and South American S.S.Co. (D.C. Tex., 1961) 30 F.R.D. 152.

III. Request For Oral Argument

Defendant respectfully requests oral argument on the aforesaid Objections To Interrogatories and Motion For Protective Order, as well as the Motions To Dismiss previously filed herein.

ROGERS, TOWERS, BAILEY, JONES & GAY

By Robert S. Smith
Robert S. Smith
1300 Florida Title Building
Jacksonville, Florida 32202
Attorneys for Defendant New Deal Cab
Company

I DO CERTIFY that a copy hereof has been furnished to William Bernard Langley, Petitioner, 5819 Moncrief Road, Jacksonville, Florida, 32209; William H. Madison, Esquire, Attorney for City of Jacksonville, Florida, 1103 City Hall, Jacksonville; and John Paul Howard, Esquire, Attorney for R. R. Whitmore, 205 Florida Title Building, Jacksonville, Florida, 32202, by United States mail, this 8 day of July, 1966.

Robert S. Smith
Attorney

[1966, July 8]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

NO. 66-187-Civ-J

WILLIAM BERNARD LANGLEY,

Petitioner,

vs.

CITY OF JACKSONVILLE, FLORIDA,
CITY COUNCIL OF JACKSONVILLE,
FLORIDA, et al.,

Respondents.

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## OBJECTIONS TO INTERROGATORIES

Defendant New Deal Cab Company files the following objections to interrogatories served on it by plaintiff in the above-captioned matter on July 1, 1966.

1. Defendant New Deal Cab Company objects to each and every interrogatory served on it by plaintiff on the grounds that all of said interrogatories are premature and wholly unnecessary in that they call for information reportedly relating to the complaint filed herein, which complaint, motions to dismiss and brief filed in support thereof by this defendant affirmatively and clearly show this Court to be without jurisdiction over the subject matter of this cause. All of said interrogatories are therefore immaterial and irrelevant.

2. Defendant New Deal Cab Company further objects to the following interrogatories numbers 1 through 27, a copy of which interrogatories are attached to these objections, on the ground that all and each of said interrogatories are irrelevant and immaterial to the subject matter of this cause.

3. Defendant New Deal Cab Company objects to interrogatory number 28 which reads as follows:

"28. Give the name and address of all persons known to you to have knowledge of one or more facts or circumstances relevant to this controversy,"

on the grounds that it is so vague, confusing and unclear that it is impossible to answer same. Said defendant further objects to said interrory on the ground that it requires a legal conclusion of defendant as to what facts or circumstances are relevant to this controversy.

## MOTION FOR PROTECTIVE ORDER

Pursuant to Rules 33 and 30(b), Federal Rules of Civil Procedure, defendant New Deal Cab Company moves the Court for an order protecting defendant from being required to investigate and answer the plaintiff's interrogatories to said defendant filed herein until the Court has ruled upon the Motion To Dismiss filed on behalf of the defendant. The groundsfor this motion are as follows:

1. It appears from the complaint, motion and affidavit to said motion that this Court is without jurisdiction over the subject matter of this case as to said defendant.

2. The answers and related investigation connected with the aforementioned interrogatories will place upon defendant a wholly unnecessary burden if, in fact, the Court dismisses the suit on the above grounds.

## NOTICE OF HEARING

TO: William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida, 32209

William H. Madison, Esquire
Attorney for City of Jacksonville
1103 City Hall, Jacksonville, Florida

John Paul Howard, Esquire
Attorney for R. R. Whitmore
205 Florida Title Building, Jacksonville, Florida

Please be advised that the undersigned attorney has written the Honorable William McRae, Judge of the above styled Court, and has requested that the aforesaid Objections To Interrogatories and Motion For Protective Order be set for hearing before said Court at the earliest possible date.

ROGERS, TOWERS, BAILEY, JONES & GAY
By Robert S Smith
Robert S. Smith
1300 Florida Title Building
Jacksonville, Florida 32202
Attorneys for Defendant New Deal Cab Company

I DO CERTIFY that a copy hereof has been furnished to William Bernard Langley, Petitioner, 5819 Moncrief Road, Jacksonville, Florida, 32209; William H. Madison, Esquire, Attorney for City of Jacksonville, Florida, 1103 City Hall, Jacksonville, Florida, and John Paul Howard, Esquire, Attorney for R. R. Whitmore, 205 Florida Title Building, Jacksonville, Florida, 32202, by United States mail, this 8 day of July, 1966.

Robert S Smith
Attorney

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

| | |
|---|---|
| WILLIAM BERNARD LANGLEY,<br>Petitioner,<br>-vs-<br>CITY OF JACKSONVILLE, FLORIDA, CITY COUNCIL OF JACKSONVILLE, FLORIDA, et al.<br>Respondents. | CIVIL ACTION NO. 66-187-CIV-J |

## INTERROGATORIES TO RESPONDENT

TO: New Deal Cab Company, A Florida Corporation
c/o Rogers, Towers, Bailey, Jones & Gay
Attorneys For New Deal Cab Company
Florida Title Building
Jacksonville, Florida

In accordance with Rule 33, Federal Rules of Civil Procedure, you are required within 15 days of service hereof, to answer separately, fully, in writing, and under oath the following interrogatories:

1. Did you notify, or cause to be notified, any taxi-cab drivers for New Deal and/or Lincoln Cab Company of a public hearing to be held December 14, 1965, in the Jacksonville City Council Chambers?

2. If your answer to question number one (1) is affirmative, were all of the New Deal-Lincoln drivers notified, or were certain drivers notified?

3. If your answer to question number one (1) is affirmative, was a written announcement posted so that all drivers could read the notice of public hearing?

4. If your answer to question number three (3) is negative, state why this was not done.

5. Were drivers notified of the public hearing orally?

6. If your answer to question number five (5) is

affirmative, were drivers notified of the public hearing orally in groups or individually?

7. If drivers were notified of the public hearing orally, in groups, were they called into the company office for this purpose?

8. If drivers were notified orally and individually, of the aforementioned public hearing, were they notified individually in the company office?

9. Were any driver or drivers offered money or credit to be applied toward their car rental fee, or running time, to appear at the aforementioned public hearing?

10. If your answer to question number nine (9) is affirmative, were any of these drivers who were offered or promised money or monetary credti toward car rental fees drivers assigned to the day shift on the date of the public hearing of December 14, 1965?

11. If your answer to question number nine (9) is affirmative, were any of these aforementioned drivers assigned to the night shift on the date of said hearing?

12. Did you pay, or cause to be paid, money to any driver or drivers who appeared at the public hearing of December 14, 1965?

13. If your answer to question number twelve (12) is affirmative, did you pay, or cause to be paid, money to any driver or drivers assigned to the night shift on the date of said hearing, who appeared at said public hearing of December 14, 1965?

14. Did you credit, or cause to be credited, monetary credit toward the car rental fee or running time of any driver or drivers who appeared at the aforementioned public hearing?

15. If your answer to question number fourteen (14) is affirmative, did you credit, or cause to be credited, monetary credit toward the said car rental fee or running time of any driver or drivers assigned to the night shift on the date of said hearing, who appeared at said public hearing of December 14, 1965?

16. If your answer to question number twelve (12) is affirmative, give the name and address, amount of money paid to each driver and indicate whether such driver was assigned to the day shift or night shift for drivers on the date of said hearing.

17. If your answer to question number fourteen (14) is affirmative, give the name and address, amount ~~of~~ credited toward the car rental fee for each driver and indicate whether such driver was assigned to the day shift or night shift on the date of said hearing.

18. If your answer to question number twelve (12) is affirmative, on what date or dates were the payments, as indicated in question number twelve (12) made?

19. If your answer to question number fourteen (14) is affirmative, on what date or dates were the credits, as indicated in question number fourteen (14) given?

20. If your answer to question number twelve (12) is affirmative, at any time prior to, on the date of, or subsequent to the public hearing of December 14, 1965, were there records, vouchers, or ledgers kept by the company which would show the payment or said monies, as indicated in question number twelve (12)?

21. If your answer to question number fourteen (14) is affirmative, at anytime prior to, on the date of, or subsequent to the aforementioned public hearing, were there records, vouchers, or ledgers kept by the company which would show the giving of said credits, as indicated in question number fourteen (14)?

[1966, July 11]

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY,
Petitioner,
-vs-
CITY OF JACKSONVILLE, FLORIDA, et al.,
Respondents.

CIVIL ACTION NO. 66-187-CIV-J

## BRIEF OF PETITIONER IN OPPOSITION TO MOTIONS TO DISMISS AND MOTIONS TO STRIKE

Petitioner William Bernard Langley files herewith his Brief in Opposition To Motions To Dismiss and Motions To Strike, filed by Respondent New Deal Cab Company, a Florida Corporation.

### I. Motions To Dismiss For Lack of Subject Matter Jurisdiction Should Be Denied.

Respondent New Deal Cab Company cites several cases which show that the Court lacks jurisdiction in cases arising under the Civil Rights Statutes that involve the invasion by an individual of the civil rights of another individual. Respondent further shows that the Civil Rights Act was enacted to enforce the Fourteenth Amendment to the Constitution, which amendment is directed only to state action, and that 42 U.S.C., sec. 1983 preserves constitutional rights from infringment by persons who act under color of law.

Petitioner concurs with Respondent in all of these things. However, none of these cases are in point, and have no bearing upon the case at bar. Each and every one of these aforementioned cases are concerned only with the invasion by an individual of the rights of another individual. Such is not the case in the instant cause. We are concerned here with the invasion of the rights of an individual by parties acting under color of state law and individual joined and cooperating with the aforementioned state officers in their wrongful acts.

It is elementary that if Petitioner had brought his complaint solely against Respondent New Deal Cab Company, the Court would lack jurisdiction. However, it is quite clear that Petitioner has alleged that said Respondent has joined and cooperated with parties, who act under color of law, to interfere with and infringe upon the civil rights of this Petitioner. Further Petitioner has alleged (perhaps not in these exact words), that the interference with his civil rights and consequent injury was caused by Respondents, acting individually, jointly or in concert.

In the case of Johnson v. Crumlish, (D.C. Pa. 1963), 224 F. Supp. 22, the Court said:

> "The individual defendants, a private attorney and his client, argue that they are immune from liability under the Civil Rights Act because the acts of private individuals are not within the purview of the Civil Rights Act § 1983. While the main purpose of the Civil Rights Act is to protect the Fourteenth Amendment rights of all Citizens from encroachment by arbitrary state action, individuals who allegedly joined or cooperated with state officers who acted under color of state law are also subject to liability under the Civil Rights Act..."

The United States Supreme Court, in the case of Turner v. City of Memphis, et al., 369 U.S. 350, 92 S Ct. 805, 7 L. Ed., similiarly held that individuals who joined with parties who acted under color of law would be liable under the Civil Rights Act.

We find further a similiar ruling in Valle v. Stengel, (3 Cir. 1949), 176 F. 2d 697.

And finally in a case most noteworthy, in that it is much in point with the case at bar, having many aspects similiar to the instant cause (we refer to this case further in later topics); Picking v. Pennsylvania Railroad Co., (3 cir 1945), 151 F. 2d 240, wherein the Court also held that an individual, (Pennsylvania Railroad Co., a corporate individual) who was allegedly joined with parties who acted under color of law, was liable under the Civil Rights Act.

Petitioner has cited a U. S. Supreme Court case, two circuit court of Appeals cases, which have not been reversed, and one Federal District Court case; all of which appears to be irrefutable evidence of the fact that individuals, allegedly joined with and cooperating with parties who act under color of law, are liable under the Civil Rights Act.

It therefore appears that this Court has jurisdiction of the subject matter of this controversy as to Respondent New Deal Cab Company.

## II. Motion To Dismiss For Failure To Comply With Rule 8 (a), Federal Rules of Civil Procedure, Should Be Denied

Respondent New Deal Cab Company has alleged that the Amended Complaint has not set forth a "short plain statement of the claim showing that the pleader is entitled to relief," and that the said Complaint is so poorly constructed that it is impossible for Respondent to frame a logical answer.

Peitioner says that the description "short and plain" is a matter of semantics, is further a matter of comparative measurements and Petitioner has complied with aforementioned Rule 8 (a) in the manner best known to him, appearing pro se.

In the case of Ghadiali v. Deleware State Medical Society, (D.C. Del.) 48 F. Supp. 789, 790, it is held that where a plaintiff pleads pro se in a suit for the protection of Civil Rights, the Court should endeavor to constrive the plaintiffs pleading without regard for technicalities; In Allen v. Corsano, (D. C. Del) 56 F. Supp. 169, 170, we find a similiar opinion.

Both of the above casea cited with approval in Picking v. Pennsylvania R. Co., (3 Civ. 1945) 151 F. 2d 240.

## III. Motion To Dismiss For Failure To State A Claim For Relief Should Be Denied

The purpose of the Civil Rights Act has been lucidly stated by the Supreme Court in Monroe v. Pope, 365 U.S. 167, 180, 81, S. Ct. 473, 480, 5 L. Ed. 2d 492 (1960), wherein the Court said:

> "....It is abundantly clear that the one reason the legislation was passed was to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance or **otherwise**, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges, and immunities guarranteed by the Fourteenth Amendment might be denied by the state agencies." (Emphasis supplied)

Above Supreme Court case cited with approval in Johnson v. Crumlish, (D.C. Pa. 1963), 224 F. Supp. 22, wherein the Court, disagreeing with contention of defendants therein that there must be a purposeful and systematic policy of discrimination by public officers before a cause of action arises under the Civil Rights Act, said:

> "This argument seems to ignore the Supreme Court's holding in Monroe v. Pope, supra, where the Court specifically held, at p. 180, 81 S. Ct. at p. 480, that the "federal right" exists whenever state laws are not enforced because of "prejudice," "passion," "neglect," "intolerance" or "otherwise" and a citizens claim to privileges and immunities under the Fourteenth Amendment "might be denied by the state agencies." The Supreme Court has made "neglect" a grounds for a federally derived claim as well as "prejudice", "passion" and "intolerance." In addition to these grounds the Court made a blanket denunciation of all forms of conduct which deny Fourteenth Amendment rights by adding the phrase "or otherwise" after the above-prescribed conduct."

In view of the above quoted United States Supreme Court opinion, Petitioner feels strongly that the gross abuse of discretionary power by the City of Jacksonville, by and through its City Council, will constitute grounds for a cause of action. In that Respondent New Deal Cab Company has "joined and cooperated" with other party defendants who act under color of law, a statement of a claim predicated upon the "reasons" as outlined in Monroe v. Pope, 365 U.S. 167, 180, 81 S. Ct. 473, 480, 5 L. Ed. 2d 492 492 (1960), will constitute a valid claim against this Respondent.

Respondent contends that Petitioner is not entitled, upon proving his claim, to punitive damages and that he is not entitled to compensatory damages in that no basis is laid other than mental anguish, and that there is no support in Florida law to recover such damages.

Petitioner says that bodily injury is not necessary in order to seek damages under the Civil Rights Act. In cases where bodily injury is absent, as well as physical violence or brutality, the suffering and damage must necessarily be mental, and regardless of how described, and regardless of how many "counts" in the complaint, it all comes to the one thing; mental anguish.

In Johnson v. Crumlish, (D.C. Pa. 1963), 224 F. Supp. 22 it is held that it is not necessary to cause of action under Civil Act that there be physical brutality.

As to Respondents' statement that there is no support in Florida law________. It is held that an action for violation of civil rights is an action arising under a federal statute governed by federal law, and the rule of Erie v. Tompkins, (304 U.S. 64, 58 Ct. 817 82 L Ed. 1188), does not apply. Prichard v. Smith, (C.A Ark. 1961) 289 F. 2d 153, ~~88 A.L.R., 2d 1146~~.

It therefore follows that whether there is support, or the is no support, in Florida law, it is of no consequence.

Respondents, in their supporting brief, charge that Petitioner has intermixed all kinds of charges, and that Petitioner alleg unlawfulness in cases where officials are simply carrying out their administrative functions. It may be that some of the alleged action, when taken severally, could be considered lawful. However, it is hel that lawful acts may become unlawful when taken in concert. United States v. United States Gypsum Co., (333 U.S. 364) 68 S. ct. 525, 92 L. Ed 746.

Further, **Petitioner** feels that this is a Court of Equity wherein we are not concerned primarily with the common law aspect and the technical niceties; rather, we are concerned with a determinatio of what wrong, if any, has been done and what appears to be the equit able solution.

As previously said, in a Court of Equity, pursuant to 42 U S.C. § 1983, it would appear that we would not concern ourselved wit how concise and precise pleadings by plaintiff, appearing pro se, should be; rather, we are concerned with getting as much of the fact and related matters before the Court as possible.

Your Petitioner respectfully submits that Respondents Motions To Dismiss For Failure to State a Claim should be denied.

## IV. Motions To Strike Should Be Denied

The allegations and contentions of Respondent contained in their support of motions number one, two, three, and four of moti to strike are mere conclusions of Respondent and are unsupported by authority and citations of law, and therefore simply express persona opinions.

Respondents' motions to strike, from the amended Compalint, paragraphs 8, 9, 10, and sections (a) and (b) of the prayer for relief should be denied, in that Respondent advances no authority that is valid before this Court in support of the motions.

Statements contained in paragraph 8 and 9 of the amended complaint are prima facial and would not be denied by Respondent. As to the inability to make conspiracy a subject of a civil action under Florida law--Petitioner observes that we are not in a state court, we are engaged in a civil action under the Civil Rights Act and therefore are not bound by state law. See Prichard v. Smith, supra. In Lefton v. City of Hattiesburg, Miss., (C.A. Miss. 1964) 333 F. 2d 280, the Court said:

> "..lIn civil rights cases, however, Congress has directed the federal courts to use that combination of federal law, common law, and state law as will be best "adapted to the object" of the Civil rights laws. Rev. Stat. § 722 (1875), applying to Title XIII, Rev. Stat.; 42 U.S.C. § 1988; see 28 U.S.C. § 1443, formerly Rev. Stat. § 641 (1875); 42 U.S.C.A. § 1988 note: Therefore a federal Court is required to use common law powers to facilitate, and not to hinder, "(p)roceedings in vindication of civil rights...."

It therefore appears from the above Court of Appeals opinion that; (a) if there was support and authority in Florida law for the recovery of punitive and compensatory damages, it would be used, (b) if there is no authority in Florida law, it does not matter, and (C) if it was forbidden by Florida law, it would be of no consequence.

Respondent New Deal Cab Company alleges that "there is no authority under Florida law, or other law which allows recovery of punitive or compensatory damages." To refute this, Petitioner again cites Picking v. Pennsylvania R. Co., supra, wherein plaintiffs sought punitive and compensatory damages in excess of one million dollars, for violation of civil rights. It is noteworthy that the Third Circuit Court of Appeals ruled that plaintiffs had stated a valid claim.

It is further held that federal law permits the recovery of exemplory or punitive damages. The provisions in this section (42 U S.C., Sec. 1983) that the offending person "shall be liable to the party injured in an action at law" connotes damages of some kind. In a civil rights case, federal common law is applied in respect to compensatory or even nominal damages as well as to exemplary or punitive damages. Basista v. Weir, (C.A. Pa. 1965), 340F. 2d 74.

Aforementioned Respondent further alleges that"....no recovery can be had for mental pain and suffering, unaccompanied by physical injuries or malice". In refuting this allegation of Respondent, Petitioner again cites *Johnson v. Crumlish*, supra, wherein it was held that it is not necessary to cause of action under Civil Rights Act that there be physical brutality. This would be contrued to cover violence or physical injuries attributed directly or indirectly to civil rights violations.

In *Monroe v. Pape*, supra, and *Johnson v. Crumlish*, supra, we find that "malice" is not a necessary reason for a federally derived claim.

Respondent New Deal Cab Company has repeatedly alleged that there is no authority to support damages for mental anguish allegedly caused by deprivation of constitutional rights...However, said Respondent has failed to cite any federal *law or authority* is support of said allegation. Citations of state law are immaterial to the question.

It appearing that Respondent New Deal Cab Company has given no good and valid reasons in support of its Motions To Dismiss and Motions To Strike, Petitioner respectfully submits that aforementioned motions should be denied, and without hearing.

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

# CERTIFICATE OF MAILING

I hereby certify that on July 11, 1966, I served by mail one copy of the foregoing Brief of Petitioner In Opposition To Motions To Dismiss and Motions To Strike upon William M. Madison, Attorney for the City of Jacksonville, Jacksonville, Florida and upon Rogers, Towers, Bailey, Jones, and Gay, Attorneys for New Deal Cab Company, at Florida Title Building, Jacksonville, Florida.

William Bernard Langley

William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

Langley

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY,
Petitioner,
-vs-
CITY OF JACKSONVILLE, FLORIDA,
et al.,
Respondents.

CIVIL ACTION NO. 66-187-CIV-J

## MEMORANDUM IN OPPOSITION TO MOTION FOR PROTECTIVE ORDER

William Bernard Langley, Petitioner in the above cause, files herewith his Memorandum In Opposition to Motion For Protective Order filed by Respondent New Deal Cab Company, a Florida Corporation.

### Motion For Protective Order Should Be Denied.

Respondent New Deal Cab Company has filed a Motion for a Protective Order based upon the following Assumptions and Contentions:

1. From the amended complaint filed by Petitioner, motion to dismiss for lack of subject matter jurisdiction and supporting brief, filed by aforementioned Respondent, it appears that the Court will dismiss this case.

2. To answer interrogatories propounded by Petitioner will place a wholly unnecessary burden upon said Respondent.

In the first instance Respondent is being overly Presumptous in assuming that the Court will dismiss this case based upon the allegations and conclusions of asid Respondent, and upon its citations of law therein. Secondly, it is elementary that the Court would not be concerned with the burden placed upon a party to answer interrogatories; unless (a) interrogatories were propounded with the intent to unduly harrass a party (b) interrogatories were totaly foreign to the subject matter of the claim (c) it is physically impossible to answer.

Petitioner knows of no mule of federal procedure that requires a party to wait until a claim is dismissed or sustained before propounding interrogatories........ Conversely, the Federal Rules of Civil Procedure appear to provide for the serving of interrogateries upon a party immediately after the commencement of an action.

It appearing that there is no justifiable reason for Respondents' Motion for Protective Order, Petitioner respectfully submits that said motion should be denied, and that hearing upon said motion should also be denied, there being no issues to be resolved from such hearing.

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

## CERTIFICATE OF MAILING

I hereby certify that on July 12, 1966 I served by mail one copy of the foregoing Memorandum In Opposition To Motion For Protective Order upon William M. Madison, Attorney for the City of Jacksonville, at City Hall, Jacksonville, Florida and upon Rogers, Towers, Bailey, Jones, and Gay, Attorneys for New Deal Cab Company, At Florida Title Building, Jacksonville, Florida.

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

[1966, July 12]

UNITED STATES DISTRICT COURT
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY,
Petitioner,

-vs-

CITY OF JACKSONVILLE, FLORIDA, et al.,
Respondents.

CIVIL ACTION NO. 66-187-CIV-J

## MOTION TO AMEND COMPLAINT

Pursuant to the Provisions of Rule 15 (a), Federal Rules of Civil Procedure, Petitioner William Bernard Langley moves this Honorable Court for leave to amend his complaint as follows:

To insert proper jurisdictional basis for claim against Respondent City of Jacksonville, Florida, a municipality, on the grounds stated:

1. It is held that U.S.C., Title 28, Section 1343 (3) and Title 42, ~~section 42~~, section 1983, do not contemplate claims for redress against a municipality for infringement of Civil Rights.

2. It is held that claims against a municipality under the aforementioned sections of the Civil Rights Act will be dismissed for lack of jurisdiction.

Petition prays for the indulgence of this Court and will amend complaint only to add proper jurisditional basis as forestated.

Petition requires less than ten (10) days for this purpose, not wishing to delay the adjudication of this controversy nor to greatly inconvenience other parties herein.

William Bernard Langley

William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

## CERTIFICATE OF MAILING

I hereby certify that on July 12, 1966, I served by mail one copy of the foregoing Motion To Amend Complaint upon William M. Madison, Attorney for the City of Jacksonville at City Hall, Jacksonville, Florida and upon Rogers, Towers, Bailey, Jones, and Gay, Attorneys for New Deal Cab Company, at Florida Title Building, Jacksonville, Florida.

William Bernard Langley

William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

[1966,

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY, )
Petitioner, )
-vs- ) CIVIL ACTION NO.66-187-CIV-J
CITY OF JACKSONVILLE, FLORIDA, )
et al., )
Respondents. )

## MEMORANDUM IN SUPPORT OF MOTION TO AMEND COMPLAINT

Petitioner, William Bernard Langley files herewith his memorandum in support of his Motion To Amend Complaint.

It is held in Monroe v. Pape, 365 U.S. 167, 180, 81 S. Ct. 473, 480, 5 L. Ed. Id, 492 (1960), that a municipality is no person as contemplated by 42, U.S.C. Sec. 1983, and therefore is liable under this section.

It is further held in Spiesel v. City of New York, (D. N. Y. 1964) 239 F. Supp. 106, aff'd 342 F. 2d 800, that a munici corporation is not a "person" within this section subjecting to liability every person who, under color of state action, subject one to deprination of his constitutional rights.

It therefore appears that Petitioners complaint must amended in order to invoke proper sections of the Civil Rights A will hold jurisdiction over Respondent City of Jacksonville, Fl Petitioner has invoked 28, U.S.C., Sec. 1343 (3) and 42 U.S.C., 1983, which apparently will not hold as to this Respondent.

William Bernard Lang
William Bernard Langley, Petiti
5819 Moncrief Road
Jacksonville, Florida

## CERTIFICATE OF MAILING

I hereby certify that on July 12, 1966, I served by mail one copy of the foregoing Memorandum In Support Of Motion To Amend Complaint upon William M. Madison, Attorney for the City of Jacksonville, at City Hall, Jacksonville, Florida and upon Rogers, Towers, Bailey, Jones and Gay, Attorneys for New Deal Cab Company, at Florida Title Building, Jacksonville, Florida.

William Bernard Langley

William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

[1966, July 15]

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY,
Petitioner,
-vs-
CITY OF JACKSONVILLE, FLORIDA, et al.
Respondents.

CIVIL ACTION NO. 66-187-CIV-J

## MOTION FOR LEAVE OF COURT TO AMEND COMPLAINT

Pursuant to the provisions of Rule 15 (a), Federal Rules of Civil Procedure, William Bernard Langley, Petitioner in the above styled cause, moves this Honorable Court for leave to amend his complaint as follows:

1. To insert 28 U.S.C., Sec. 1331, 42 U.S.C., Sec. 1983, 42 U.S.C., Sec. 1985 (2), as additional jurisdictional basis for claim against all parties herein.

2. To insert prayer for money damages in certain amounts and categories against the following named Respondents: R. B. Burrought, Jr., Clyde C. Cannon, Barney F. Cobb, Elbert H. Hendricks, Cecil F. Lowe, W. O. Mattox, Jr., Laverne R. Reynolds, Robert R. Roberts and Lemuel Sharp, members of the City Council of Jacksonville, Florida, on the grounds stated:

1. It is questionable that a claim for redress may properly lie against Respondent City of Jacksonville, Florida, a municipality.

2. 28 U.S.C. Sec. 1331, gives jurisdiction over Respondent City of Jacksonville as to a determination of the constitutionality and lawfulness of certain alleged unlawful acts of said Respondent.

3. 42 U.S.C. Sec. 1983 gives jurisdiction for the statement of a claim for redress against aforenamed Respondents, members of the City Council of Jacksonville, Florida.

4. 42 U.S.C. Sec. 1985 (2), provides full jurisdictional grounds for alleged conspiracy to infringe upon the Civil Rights of an individual.

5. In order that Petitioner's suit be put into proper posture to lead to a determination of merits and sufficiency, proper jurisdictional basis must be inserted, and redress in terms of money damages must be inserted against aforenamed Respondents, individual members of aforementioned City Council.

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

CERTIFICATE OF MAILING

I hereby certify that on July 15 , 1966, I served by mail one copy of the foregoing Motion For Leave of Court To Amend Complaint upon William M. Madison, Attorney for the City of Jacksonville, at City Hall, Jacksonville, Florida and upon Rogers, Towers, Bailey, Jones and Gay, Attorneys for New Deal Cab Company, at Florida Title Building, Jacksonville, Florida.

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

[1966, July 15]

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY,
Petitioner,
-vs-
CITY OF JACKSONVILLE, FLORIDA, et al.,
Respondents.

CIVIL ACTION NO. 66-187-CIV-J

# MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE OF COURT TO AMEND COMPLAINT

Petitioner, William Bernard Langley, files herewith his memorandum in support of his Motion For Leave of Court To Amend Complaint.

It is held in Monroe v. Pape, 365 U.S. 167, 180, 81 S. Ct. 473, 480, 5 L. Ed. Id, 492 (1960), that a municipality is not a person as contemplated by 42, U.S.C. Sec. 1983, and therefore is not liable under this section, but individuals acting under color of law are held liable.

It is further held in Spiesel v. City of New York, (D. C. N. Y. 1964) 239 F. Supp. 106, aff'd 342 F. 2d 800, that a municipal corporation is not a "person" within this section subjecting to liability every person who, under color of state action, subjects anyone to deprivation of his constitutional rights; Individuals acting under color of law are held liable.

From the foregoing cases cited, it appears that a claim for redress will not lie against a municipality such as the City of Jackville, for civil rights violations, and that claims for redress must lie against the individual violators who acted under color of law.

U.S.C. 28, Sec. 1331, on its face, shows that federal courts have jurisdiction under this section, of any party, to declare the rights of any one asserting a claim allegedly arising under the Constitution, laws, or treaties of the United States...It does not appear, however, to provide jurisdiction for redress.

In that Petitioner erred in previous complaints by not invoking sufficient jurisdictional grounds, and by not seeking damages against individual violators acting under color of law, it is necessary to make a final amendment of his complaint so that his case may be put into proper posture for a determination thereof.

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

## CERTIFICATE OF MAILING

I hereby certify that on July 15, 1966, I served by mail one copy of the foregoing Memorandum In Support Of Motion For Leave Of Court To Amend Complaint upon William M. Madison, Attorney for the City of Jacksonville, at City Hall, Jacksonville, Florida and upon Rogers, Towers, Bailey, Jones and Gay, Attorneys for New Deal Cab Company, At Florida Title Building, Jacksonville, Florida.

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

[1966, July 15]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

CIVIL ACTION NO. 66-187-Civ-J

WILLIAM BERNARD LANGLEY, )
Petitioner, )
vs. )
CITY OF JACKSONVILLE, FLORIDA, et al, )
Respondents. )

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## BRIEF IN SUPPORT OF OBJECTIONS TO INTERROGATORIES

For the reasons set forth in the brief in support of Motion to Dismiss previously filed by this Defendant and the pending motion of Plaintiff for leave to amend his complaint, the Court is without jurisdiction of the subject matter of this cause as to this Defendant.

Respectfully submitted,

/s/ Claude L. Mullis
CLAUDE L. MULLIS
1103 City Hall
Jacksonville, Florida 32202
One of the Attorneys for Defendant
City of Jacksonville

I hereby certify that a copy hereof has been furnished William Bernard Langley, Petitioner, 5819 Moncrief Road, Jacksonville, Florida, 32209; John Paul Howard, Esquire, Attorney for R. R. Whitmore, 205 Florida Title Building, Jacksonville, Florida, 32202; and Robert S. Smith, Esquire of Rogers, Towers, Bailey, Jones & Gay, Attorneys for Defendant New Deal Cab Company, 1300 Florida Title Building, Jacksonville, Florida, 32202; by United States Mail, this 15th day of July, 1966.

/s/ Claude L. Mullis
Attorney

[1966, July 19]

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY,

Petitioner,

-vs-

CITY OF JACKSONVILLE, FLORIDA, et al.,

Respondents.

CIVIL ACTION NO. 66-187-CIV-J

## MOTION TO OVERRULE OBJECTIONS TO INTERROGATORIES AND TO DENY REQUEST FOR ORAL ARGUMENT THEREON

Petitioner, William Bernard Langley, hereby moves this Honorable Court to overrule Objections To Interrogatories and to deny Request For Oral Argument submitted by Respondent New Deal Cab Company, on the grounds stated:

1. Respondents' grounds for Objections to Interrogatories are without merit, in that they reflect said Respondents personal conclusions, and are without support in facts or law.

2. It appears from the reading of said objections that there is no material question before the Court to be argured orally and that such oral argument will serve only to burden the Court and to inconvenience other parties herein.

## SUPPORTING MEMORANDUM

### OBJECTIONS TO INTERROGATORIES SHOULD BE OVERRULED

Respondent New Deal Cab Company is overly presumptuous in assuming that this Court is without jurisdiction of this case simply because said Respondent thinks so.

Aforementioned Respondent is further overly presumptuous in assuming that this Honorable Court would accept objections to interrogatories based upon grounds stated by Respondent.

Federal Rules of Civil Procedure provide that interrogatories may be propounded immediately after the commencement of an action (prior to 10 days requires leave of court). Nowhere do the rules provide that whenever a defendant feels personally that the Court lacks jurisdiction, interrogatories need not be answered until it is determined whether the Court does or does not lack jurisdiction in the case.

In any event, the burden of proof is on party objecting to interrogatories to show in what respect interrogatories are improper and that his objections should be sustained. B. & S. Drilling Co. v. Halliburton Oil Well Cementing Co., (D. C. Tex. 1959) 24 F.R.D. 1,; U. S. v. Mysco Laboratories, Inc., (C.N.Y. 1960) 26 F.R.D. 159,; Luey v. Sterrling Drug, Inc., (D. C. Mich. 1965) 240 F. Supp. 632.

Respondent New Deal Cab Company has not shown said interrogatories to be improper, and have cited no law or authority in support of objections beyond Stovall v. Gulf and South Amerinca S. S. Co., which case does not apply to this point. "Relevant to this controversy" and relevant to the subject matter of this controversy have similiar meanings in terms of interrogatories, and interrogatories may properly require conclusions or opinions.

It is held that interrogatories may relate to any matter relevant to subject matter involved in action, a field broader that matters relevant to issues. Schwentner v. White, (D.C. Mont. 1961) 199 F. Supp. 710. Interrogatories are not necessarily improper because they require conclusions or opinions. Hartfield v. Gulf Oil Corp., (D.C. Pa. 1962) 29 F.R.D. 163.

## REQUEST FOR ORAL ARGUMENT SHOULD BE DENIED

Respondent New Deal Cab Company has no meritorious grounds for burdening this Court and other parties herein by oral argument on the forestated objections to interrogatories.

It appears to Petitioner that there is nothing to argue--certainly not on the jurisdiction of this Court in connection with said interrogatories.

Respondent feels that interrogatories are immaterial and irrelevant to the cause. Petitioner surmises that by this that said Respondent means that answers to said interrogatories will be inadmissi as evidence at trial. Petitioner says that admissible evidence and matters relevant to the subject matter of the controversy are entirely different things. A party may interrogate another party in any matter relevant to the subject matter of the controversy.

There appearing to be no good and sufficient reasons for objections to Interrogatories and oral Argument, Petitioner respectfully submits that the said objections and request for oral argument should be over-ruled and denied and that an Order be issued requiring aforementioned Respondent to **answer** interrogatories propounded by Petitioner, to said Respondent, within the time remaining for such answers.

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

## CERTIFICATE OF MAILING

I hereby certify that on July 19 ,1966, I served by mail one copy of the foregoing Motion To Overrule Objections To Interrogatories And To Deny Request For Oral Argument Thereon upon William M. Madison, Attorney for the City of Jacksonville, at City Hall, Jacksonville, Florida and upon Rogers, Towers, Bailey, Jones and Gay, Attorneys for New Deal Cab Company at Florida Title Building, Jacksonville, Florida.

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

[1966, July 25]

HON. WM. A. McRAE, JR.
JUDGE MIDDLE DISTRICT OF FLORIDA
UNITED STATES DISTRICT COURT
JACKSONVILLE, FLORIDA

MOTION CALENDAR
MONDAY: July 25, 1966
NOTICE: Motions in below styled cases will be called for argument before the Honorable Wm. A. McRae, Jr. in Courtroom Number 2, U.S. Courthouse & Post Office Bldg. Jacksonville, Florida, at time indicated below.

TIME: 2:00 P.M.

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No. 65-356-Civ-J

| | |
|---|---|
| United States of America | Bernard Nachman, Asst. U.S. Attorney |
| vs | |
| Carl Roger Cash | Ralph W. Nimons Jr. Atty. Ad Litem<br>616 Atlantic National Bank Bldg.<br>Jacksonville, Florida 32202 |
| and | |
| Phyllis J. Cash, his wife | Phyllis J. Cash Welcome Mat Trailer Park<br>Lot E 7 5027 N. Davis Highway<br>Pensacola, Florida |

Motion for default & Summary Judgment by Pltf.
Estimated time: 5 Minutes.

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No. 66-19-Civ-J

| | |
|---|---|
| United States of America | Bernard Nachman, Asst. U.S. Attorney |
| vs | |
| Garry L. Sparkman & Karen S. Sparkman, his wife | |
| Lee D. Jordan | Morton P. Kesler, Esq. Atty. Ad Litem |
| and | 505 Florida Title Bldg. Jacksonville, Fla. |
| Annette Jordan, his wife | |

Motion for default & Summary Judgment by Pltf.
Estimated Time: 5 minutes.

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No.66-330-Civ-J

| | |
|---|---|
| United States of America | Bernard Nachman, Asst. U.S. Attorney |
| vs | |
| Irving H. Royal and Elizabeth Royal, his wife | |
| Bernard Jennings Petit | Robert B. Horner, Esq. Atty. Ad Litem<br>First Bank & Trust Bldg. |
| and | Jacksonville, Florida 32202 |
| Hazel Petit, his wife | |

Motion for default & Summary Judgment by Pltf.
Estimated Time: 5 minutes.

---

No.66-16-Civ-J

| | |
|---|---|
| Aero Corporation a corp. | Brannon, Brown, Norris & Vocelle<br>State Exchange Bank Bldg.<br>Lake City, Florida |
| vs | |
| California Airmotive Corporation, a corp. | Bolles, Goodwin & Ryskamp<br>308 Ainsley Bldg.<br>Miami, Florida 33132<br>(Mr. W. O. Birchfield, Esq.)<br>Milam Ramsay & Martin<br>1711 Barnett National Bank Bldg.<br>Jacksonville, Florida 32202 |

Motion to produce by Pltf.
Estimated Time: 5 minutes.

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| | |
|---|---|
| No. 66-187-Civ-J<br>William Bernard Langley | William Bernard Langley-in proper person<br>5819 Moncrief Road<br>Jacksonville, Florida 32209 |
| vs | |
| City of Jacksonville, Fla. Clyde C. Cannon, R. B. Burroughs, Jr. Barney F. Cobb, Elbert H. Hendricks, Cecil F. Lowe, W. O. Mattox, Jr., Lavern R. Roberts, Lemuel Sharp, members of City Council of Jacksonville, Florida and | William M. Madison, City Attorney<br>Claude L.Mullis, City Attorney<br>William Lee Allen, City Attorney<br>1103 City Hall<br>Jacksonville, Florida 32202 |
| New Deal Cab Co. a Florida Corporation | Rogers, Towers, Bailey, Jones & Gay<br>1300 Florida Title Bldg.<br>Jacksonville, Florida 32202 |

Motion to dismiss and motion to quash by Burroughs et al City Council

Motion to dismiss & More definite statement and objections to interrogatories by City of Jacksonville & Cannon

Motion for leave to amend complaint by Langley.

Motion to strike and suppress interrogatories, motion to dismiss and objections to interrogatories by New Deal Cab Co.

[1966, July 28]

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY,

Plaintiff,

v. No. 66-187-Civ-J

CITY OF JACKSONVILLE,
FLORIDA, et al,

Defendants.

## ORDER

After due notice and hearing, it is, upon consideration,

ORDERED that plaintiff's Amended Complaint is dismissed for failure to state a claim upon which relief can be granted, plaintiff not having shown any deprivation of a right, privilege or immunity secured by the Constitution and laws of the United States.

DONE AND ORDERED at Jacksonville, Florida, this 28th day of July, 1966.

Original signed:
Wm A. McRAE, JR.

Judge

Copies to counsel

966, August 4] 1

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY, )
)
Petitioner, )
)
-vs- ) CIVIL ACTION NO. 66-187-CIV-J
)
CITY OF JACKSONVILLE, FLORIDA, )
et. al., )
)
)
Respondents. )
- - - - - - - - - - - - - - - - - - )

## MOTION TO AMEND JUDGMENT

Pursuant to the provisions of Rule 59 (e), Federal Rules of Civil Procedure, Petitioner William Bernard Langley hereby moves this court to amend the judgment contained in its Order of July 28, 1966, dismissing Amended Complaint "for failure to state a claim upon which relief can be granted, plaintiff not having shown any deprivation of a right, privilege or immunity secured by the Constitution and laws of the United States," on the grounds stated:

1. It appears that the judgment contained in aforementioned Order is contrary to the philosophy and language of the Opinion of the United States Supreme Court in the case of Monroe V. Pape, 365 U.S. 167, 180, 81, S. Ct. 473, 480, 5 L. Ed. 2d 492 (1960).

2. It appears that the judgment contained in aforementioned Order is contrary to the philosophy and language of the Opinion of the United States Supreme Court in the case of Meyer V. Nebraska, 262 U.S. 390, 399 (1923).

3. It appears that the judgment contained in aforementioned Order is contrary to the philosophy and language of the Opinion of the United States Supreme Court in the case of Allgeyer V. Louisiana, 165 U. S. 578, 589 (1897).

4. It appears that the judgment contained in aforementioned Order is contrary to the philosophy and Opinion of the United States Supreme Court in the case of Coppage V. Kansas, 236 U.S. 1, 14 (1915).

5. It appears that the judgment contained in aforementioned Order is contrary to the findings and interpretations of the Constitution of the United States of America, Revised and Annotated, 1963, pp. 1201-1206, in relation to Notice and Hearings.

6. It affirmatively appears that the controversy at bar involves a substantial constitutional question that is concerned with the interpretation of the due process of law, and the due process in civil proceedings clauses of the Fourteenth Amendment to the Constitution, in relation to the abuse of discretionary powers of local governmental officials acting under color of law.

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

## CERTIFICATE OF MAILING

I hereby certify that on August 4, 1966, I served by mail one copy of the foregoing Motion To Amend Judgment upon William M. Madison Attorney for the City of Jacksonville, Florida and upon Rogers, Towers, Bailey, Jones, and Gay, Attorneys for New Deal Cab Company, at Florida Title Building, Jacksonville, Florida.

William Bernard Langley

William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

[66, August 24]

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BERNARD LANGLEY,
Petitioner,
-vs-
CITY OF JACKSONVILLE, FLORIDA, et. al.,
Respondents.

CIVIL ACTION NO. 66-187-CIV-J

## BRIEF OF PETITIONER IN SUPPORT OF MOTION TO AMEND JUDGMENT

It appears that the judgment contained in aforementioned Order is contrary to the philosophy and language of the Opinion of the United States Supreme Court in the case of Monroe v. Pope, 365 U.S. 167, 180, 81, S. Ct. 473, 480, 5 L. Ed. 2d 492 (1960).

The purpose of the Civil Rights Act has been lucidly stated by the Supreme Court in Monroe v. Pope, 365 U.S. 167, 180, 81, S. Ct. 473, 480, 5 L. Ed. 2d 492 (1960), wherein the Court said:

> "....It is abundantly clear that the one reason the legislation was passed was to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by the state agencies." (Emphasis Supplied)

In view of the above United States Supreme Court Opinion, it is established that there need not be a purposeful of systematic interference with the rights of an individual by public officials in order to establish grounds for a valid claim under the Civil Rights Act.

As spelled out by the Court in Monroe v. Pope, the actions of the individual Respondents herein who are members of the City Council, as indicated in the Amended Complaint, would properly fit into the category of "neglect" and the abuse of their discretionary powers would fit into the category of "otherwise."

The question as to the validity of a claim therefore is bottomed upon whether the actions of the public officials herein were actions taken in the ordinary ministrations of their duties.....Your Petitioner thinks not, and would show that the actions of these individuals, as spelled out in the Amended Complaint, clearly and affirmatively show an abuse of discretionary power.

Briefly, we review the actions of the Respondents who are members of the City Council:

1. Nearly eleven (11) months passed before a hearing was held on the application of Petitioner. On its face, this is an abuse of discretionary power and cannot be reconciled to ordinary ministrations...and even if it were ordinary it would be an abuse of power.

2. Improper notice, especially after an eleven (11) month interval, was given of the hearing.

3. The time set for the hearing, ten o'clock in the morning, was disadvantageous to Petitioner and to the purpose of the hearing in that persons to testify would be at work and could not be able to attend.

4. When Petitioner informed the Chairman of the Committee for the hearing of the above facts and requested additional days for preparation for a bona-fide hearing to make a true determination, refusal was a raw abuse of power.

5. To refuse to take into account a bona-fide petition of 1000 citizens requesting additional taxi service (although they were unable to appear because of insufficient notice and because of the time set for the hearing) as against a handful of

persons appearing in opposition, constituted an abuse of discretionary power.

6. To arbitrarily deny permits to Petitioner as a result of a hearing where no actual determination could have been possibly made was gross abuse of discretionary power and an interference with due process of law as well as a denial of due process in Civil proceedings.

As we have shown, the language of the opinion in Monroe v. Pope, which we have quoted, provides for just such a situation which we have shown above, and in accordance with the language of that opinion, Petitioner has not been afforded due process of law, and a valid claim has been stated.

It appears that the judgment contained in aforementioned Order is contrary to the philosophy and language of the Opinion of the United States Supreme Court in the case of Meyer v. Nebraska, 262 U.S. 390, 399 (1923).

It is universally held that "liberty" under the due process of law clause of Constitutional Amendment 14, guarantees to every person the right to contract and to engage in any of the common occupations of life. In defining this "liberty", the Court in Meyer v. Nebraska, 262 U. S. 390, 399 (1923) said:

> "While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

It is axiomatic that the right to follow any procedure established by law to qualify for or receive permit or license for "any of the common occupations of life" is also guaranteed by the Constitution. It follows that any interference with this guaranteed right by public officials through any of the reasons as outlined in Monroe v. Pape, supra, including abuse of power, would deprive an individual of liberty as guaranteed by Constitutional Amendment 14, and due process of law would not have been afforded.

Where a condition of this nature exists, and where public officials have in any manner interfered with or prevented a condition adequate to determine eligibility of an individual to engage in a particular vocation or business, and especially when these officials have been advised of said interference, adequate grounds for the statement of a claim exists.

It appears that the judgment contained in aforementioned Order is contrary to the philosophy and language of the Opinion of the United States Supreme Court in the case of Allgeyer v. Louisiana, 165 U.S. 578, 589 (1897).

We find a precise definition of liberty of contract in Allgeyer v. Louisiana, 165 U.S. 578, 589 (1897), wherein the Court said:

> "The liberty mentioned in that (Fourteenth) Amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all of his faculties; to be free to use them in all lawful ways, to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."

We find in the above philosophy and Opinion further support in Petitioner's position that an individual is guaranteed the right to engage in any lawful occupation for which he qualifies and that no person cloaked with and hiding behind authority of law may prevent an individual from adequately qualifying for such trade or profession.....

It appears that the judgment contained in aforementioned Order is contrary to the philosophy and Opinion of the United States Supreme Court in the case of Coppage v. Kansas, 236 U.S. 1, 14 (1915).

Applied repeatedly in subsequent cases as a restraint on State power, freedom of contract has also been alluded to as a property right, as is evident in the language of the Court in Coppage v. Kansas, 236, U. S. 1,14 (1915), wherein the Court said:

> "Included in the right of personal liberty and the right of private property--partaking of the nature of each--is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money on other forms of property. If this right is struck down or arbitrarily interfered with there is a substantial impairment of liberty in the long established constitutional sense."

Petitioner has cited the philosophy and Opinions of the foregoing U. S. Supreme Court cases to further point out what he has contended all along--that it is his constitutional right to engage in any business he desires that is lawful and for which he is qualified. And regardless of how much pretended innocence on the part of defendant officials herein, Petitioner knows of a certainty that through the abuse of their discretionary powers, these said officials have prevented Petitioner from having a hearing adequate to determine with any degree of definitiveness the question of the need for additional taxi service.

In that it is abundantly clear that the actions of the individual Respondents could not be considered as anything but an abuse of discretionary power, in the absence of an opinion, this Court Seemingly finds that the abuse of power by aforementioned Respondents does not interfere with due process of law, and due process in civil proceedings guaranteed to this Petitioner and to everyone. Petitioner has accordingly addressed himself to this point.

It appears that the judgment contained in aforementioned Order is contrary to the findings and interpretations of the Constitution of the United States of America, Revised and Annotated, 1963, pp. 1201-1206, in relation to Notice and Hearings.

Relevant portions of the Constitution of the United States of America, directly in point in relation to the matter of notice and hearings, pages 1201-1206, are shown here in haec verba:

> "...On the other hand, if a regualation, sometimes described as an order or action of an administrative body, is of limited application; that is, affects the property or interests of specific, named individuals, or a relatively small number of people readily identifiable by their relation to the property or interests affected, the question whether notice and hearing is prerequisite and, if so, whether it must precede such action, becomes a matter of greater urgency..."
>
> "As to that portion of administrative activity pertaining to the making of determinations or the issuance of orders, of limited or individual application, the obligation to afford notice and hearing reasonably clear. The most frequently litigated types of administrative action embracing the latter issue have been determinations to withhold issuance of or to revoke, an occupational license, or to impound or destroy property believed to be dangerous to public health, morals, or safety. Apparently in recognition of the fact that few occupations today can be pursued without a license, the trend of decisions is toward sustaining a requirement of a hearing before refusal to issue a license..."
>
> "...Adequacy, moreover, is no less an essential attribute of a hearing than it is of notice; and, as the preceding discussion has shown, unless a person involved in administrative as well as judicial proceedings has received a hearing that is both sufficient and fair and has been subjected to rulings amply supported by the evidence introduced threat, he will not be considered to have been afforded due process." (Emphasis added).

Above quoted portions of the Constitution show very clearly that proper notice must be given of a hearing and that the hearing itself must be adequate and fair and that the rulings must be supported by the evidence introduced thereat.

It is quite clearly shown that none of these things were afforded your Petitioner. Therefore, from the language of the foregoing quote, it very affirmatively appears that Petitioner has not been afforded due process in civil proceedings and has therefore stated a valid claim for which relief may be granted.

From all of the foregoing citation of authorities it affirmatively appears from the language therein, that the actions of the individual defendants under color of law have interfered with the ability of Petitioner to adequately qualify for the occupational pursuit he desires and have thereby not afforded him due process. It is abundantly clear, on the face of matter, that aforementioned hearing required to determine whether Petitioner may lawfully follow his chosen occupation was not adequate for the purpose, was not fair and the rulings as a result of said hearing were not amply supported by the evidence thereat, in that sufficient witnesses to testify to both sides of the question were not given opportunity to be present and further this opportunity was denied by these public officials through their refusal to postpone said hearing.

It therefore affirmatively appears that Petitioner has stated a valid claim in that he has been denied due process of law...And he very definitely and conclusively has been denied due process in civil proceedings.

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

## CERTIFICATE OF MAILING

I hereby certify that on August 4, 1966, I served by mail one copy of the foregoing Brief Of Petitioner In Support Of Motion To Amend Judgment upon William M. Madison, Attorney for the City of Jacksonville, Jacksonville, Florida and upon Rogers, Towers, Bailey, Jones, and Gay, Attorneys for New Deal Cab Company, at Florida Title Building, Jacksonville, Florida.

William Bernard Langley
William Bernard Langley, Petitioner
5819 Moncrief Road
Jacksonville, Florida

To: Legal Department

From: Duff Campbell

Date: August 23, 1966

Re: Langley case from John Due

In January of 1965, in accordance with state law, William Langley, a Negro, submitted to the City Council of Jacksonville, Florida his application for permission to operate taxicabs in the city. Not until December 9, 1965 did the Council grant him a hearing, at which time they set the hearing for five days later, on December 14, at 10 a.m. Mr. Langley requested that he be given more time to inform his witnesses and that the time for the hearing be set after working hours; this request was denied. At the hearing, Mr. Langley submitted a petition signed by 1000 persons requesting additional taxi service. Mr. Langley's request for a permit was nonetheless denied. There are presently six licensed cab companies in Jacksonville, all white owned.

In February of 1966 Mr. Langley filed a pro se petition for a declaratory judgment and writ of mandamus in the United States District Court for the Middle District of Florida, naming as respondents the City of Jacksonville, the City Council and its Chairman, and one R. R. Whitmore (later the petition was amended to add all membersof the City Council and New Deal Cab Company). The petition charged a violation of Mr. Langley's constitutional rights of equal protection and due process under the Fourteenth Amendment and 42 U.S.C. §§ 1981, 1982, 1983, and a violation of the Sherman Act § 2. After many motions to strike and dismiss Langley's complaint and many amendments to the complaint by Langley, the final amended complaint of ten pages alleged in detail not only a violation of Langley's constitutional rights of equal protection and due process but also a conspiracy to monopolize tax service by respondents New Deal Cab Company and the City Council of Jacksonville. (See complaint dated June 10, 1966) On July 28, 1966 Judge William A. McRae, Jr. dismissed Langley's amended complaint for "failure to state a claim upon which relief can be granted, plaintiff not having shown any deprivation of a right, privilege or immunity secu by the Constitution and Laws of the United States." On August 4, 1966 William Langley filed his motion to amend judgment. The case now stand at this point.

April 4, 1966

Honorable William A. McRae, Jr.
512 Federal Building
Jacksonville, Florida 32202

Re: Civil Action No. 66-187-Civ-J
William Bernard Langley vs.
City of Jacksonville, etc.
and Clyde C. Cannon, etc.

Dear Judge McRae:

It is requested that the Objections to Interrogatories filed by defendants City of Jacksonville and Clyde C. Cannon in the above-captioned matter be set for hearing at the earliest available date.

Respectfully yours,

William Lee Allen

William Lee Allen
Assistant City Solicitor

WLA:jl
cc: William Bernard Langley
5819 Moncrief Road
Jacksonville, Florida 32209

Robert S. Smith, Esquire
Rogers, Towers, Bailey, Jones & Gay
1300 Florida Title Building
Jacksonville, Florida 32202

WM. H. ROGERS
C. D. TOWERS
C. C. BAILEY
H. T. JONES
C. D. TOWERS, JR.
J. EDWIN GAY
W. R. BLACKARD
L. R. BAXTER
B. T. MILLER
W. C. ANDERSON
C. G. KING, JR.
J. M. McLEAN
F. M. RINGEL
R. S. SMITH
D. M. FOSTER
O. B. BOONE
F. X. FRIEDMANN

ROGERS, TOWERS, BAILEY, JONES & GAY
ATTORNEYS AT LAW
FLORIDA TITLE BUILDING
JACKSONVILLE, FLORIDA 32202

COPY

July 8, 1966

Honorable William A. McRae, Jr
512 Federal Building
Jacksonville, Florida 32202

Re: William Bernard Langley vs. City
of Jacksonville, Florida, City Council
of Jacksonville, Florida, et al

Dear Judge McRae:

It is requested that the Objections To Interrogatories and Motion for Protective Order filed by defendant New Deal Cab Company in the above-captioned matter be set for hearing at the earliest available date.

Respectfully yours,

Robert S. Smith

Robert S. Smith

RSS/ms
cc: Messrs. William Bernard Langley
William H. Madison
John Paul Howard

[1966, August]

Rough chronology
of "what happened" ①

Jan 25, 1965 application 25 non-metered cabs
Feb 24 amended – 10 non-metered
Mar 29 " – 25 + 10
Nov 9 asked for pub hearing in accord w law to determine need
and nec for add. cab permits
Dec 9 granted hearing for Dec 14 – 10 am
v City Council + chairman + Whitmore
Feb 28, '66 petition for declaratory judg + writ of mandamus
charges: viol d.p. + eq. protection
§ 1981 and 1982, Title 42 USC
§ 2 Sherman Act
charges inadeq. notice of hearing + time · 10 am work day
11 mo. wait
1000 persons signed petition for add. taxi service
those agnst were taxi + bus co. employees
6 lic tax co. in J'ville, all wh-owned - no Negroes
conspic by 11 mo wait, no proper notice, not at time when
interested persons could appear, no good faith hearing +
eval of need, arbit denial of lic – all because is
Negro + city trying to retain monopoly by wh owned co.
juris under § 1343 (3) Title 28 USC – fed cts orig juris
any civil action to redress depriv under color st law
ordin any rt, priv, immun of Constit or Act
Cong providing for eq rts citizens or persons w/in US
ask declare pub hearing unconstit + unlawful + order
City Council hold hearing w. suffic notice w/in reas
time + not over 30 days + after 5 pm + other proper
relief

Mar 21 amended c'plt

juris also §2201, Title 28 USC

added New Deal Cab Co as respondent → charged co. conspir to deprive him of d.p. + eq protection 14th amnts, applic sections Tit 42, USC + applic sections Sherman act by

bribing others to file fraudulent applic for permits

offering $ to those oppos. add. permits at Dec 14 hearing giving $ ^

all to retain monopoly to wh persons

Mar 24 Whitmore moves to quash under Rule 4 FRCP cause was left at office + not personally or us. place abode

April 5 Langley's reply to motion to quash: Whitmore served in compliance w. st law + such is valid to give Fed Dist Ct juris

Mar 28 Langley filed interrogatories to respondents (R. 33 FRCP) (City Council, City, Whitmore, New Deal)

Mar 30 Respondents City, City Council + Chairman Cannon's motions to dismiss, strike + for more definite statement

① dismiss — a) for lack of juris

§1983 doesn't apply to municipal corp, nor does §1985 + §1982 is inapplic. + so is 1981 — for juris to be ok under 14th, facts must bring case w/in one of 4 provisions of 28 USC §1343 = 1+2 no agst city, 3 no alleg of acting under color of law + no dam or eq relief as under 4

b) failure st claim: aside from arguments under lack of juris, no specific Sherman Act viol is alleged — Fla cases hold that lic is discretionary w. city - also no c/a for declar relief cause no alleg that petitioner is uncert of his rts - no gds for mandamus

c) failure c'ply w. Rule 8 (a)(2)

d) failure join indisp parties - can't sue city council as entity + other members besides Cannon are indispensable

② strike - 1) law of Fla. = can't sue City Council, but just city 2) mandamus abol in Fla = now obtain same by approp action or motion 3) ordinances must be pleaded + proven *in haec verba* + so should strike all narrative accts 4) alleg of conspir w/o stmt of facts = insuffic cause is legal conclus

③ quash - cause can't sue city council

April 7 reply memorandum brief by Langley

① re motion to dismiss: 1) lack juris - Title 28, §2201 USC furnishes auth whereby fed ct may assume juris + method of determining juris is left to ct - §1982, 42 USC applies (taxi permits are pers prop of value) §1981, 42 USC *does* apply - 28 USC §1343 applies also - fed juris isn't divested by plaintiff's failure to specific request damages if such is implied in request for such dam as ct deems proper 2) fail st claim - for purpose of motion to dismiss fail st claim, ct must assume alleg are true + address itself solely to legal [illegible] sufficiency of their significance - if p. entitled to relief under *any* st of facts which could be proved in support of his claim = entitled to oppor to prove 3) fail comply Rule 8 -

p. claims has complied as best he can pro se – cites re lib construc of pleadings by layman 4) indispens parties: Rule 17(b) FRCP = can sue city council cause City Council comes under exception of "unincorp assoc which has no capac by law of st" + can be sued to enforce US Constit substantive rt

② strike – Rule 17(b) see above #4 – strike motions in fed cts are useful + appropriately where parties disagree on legal implications (cite) asks leave of ct to insert ordinances *in haec verba*

③ shouldn't quash cause *can* sue city council

④ more defin stmt – should be denied where was not so vague as to prevent dft from reas. preparing answer

April 4 Respondents Objections to Interrogatories – City, Cannon – generally cause can't call for opinions or legal conclusions + must be relevant (Cannon did answer a few)

Apr 6 Motion to quash + objections to interrogs. by Whitmore

1) cause were mailed to atty.

2) summons in cause was served 2 days after interrogs were mailed – Rule 33 = must serve interrogs after commencement of action (orig. service of summons was improper + then corrected

Apr 13 Langley's reply memorandum brief to ↑

action (accord Rule 3) began w. c'*plt* not summons so ok

Apr 13 Langley's motion for leave to am. c'plt to insert ordinances *in haec verba* – bec. ct doesn't take jud notice of ordinances

Apr 15 New Deal's motion to dismiss + strike (+ request for ~~[illegible]~~ oral argument)

dismiss 1) cause am c'plt fails st claim agnst this respondent 2) no relief prayed for agnst this respondent 3) no case or controv. between petitioner + this respondent 4) no fed juris over subj matter: no diversity alleg., no juris amt, no facts indic. fed juris, 28 USC §2201 not applic

strike : 1) "writ of mandamus" cause abolished etc. other parts – no civil action for "bribery," it's a stat offense + isn't committed unless $ goes to pub offic to influence his acts – New Deal has no power to deny taxi permits only to urge their denial – petitioner states no facts on which to base conspic. alleg.

Apr 18 Langley's interrog to New Deal

Apr 19 Langley's reply to New Deal's motion to strike + dismiss (17 pages worth) – claim was stated in orig c'plt + am relates back, is a controversy – mandamus is ok as ancillary proceeding – etc, etc

Apr 18 Respondent Whitmore's motion dismiss – no juris, no c/a, no relief agnst this respondent prayed for

Apr 21 US Dist Ct Middle Dist Fla (J. McRae) sets May 16 for hearing on all pending motions

| | |
|---|---|
| Apr 27 | Hearing reset for May 23 |
| May 12 | Langley's reply to motion d'miss + strike by Whitmore |
| May 23 | Plaintiff's motion to amend granted + allowed 20 days to file – consid of all pending motions deferred till after am. |
| June 13 | Langley filed am. c'plt |
| June 17 | Langley served New Deal w. failure ans. interrog. |
| June 23 | New Deal's motion to strike + suppress interrog. cause were directed to atty, who is not a party (Rule 33 = must serve "an adverse party.") |
| June 27 | Motion to quash cause no service of am c'plt on City Council members |
| July 7 | Langley's reply to ↑ — was service in compliance w. st law + that's enough to give Fed Dist Ct juris |
| June 27 | Respondent City + Cannon motion dismiss for lack juris, no c/relief, not in compliance w. Rule 8, no joinder of indisp parties (city council members) |
| July 7 | Langley's reply to ↑ |
| June 27 | New Deal motion dismiss + strike |
| July 11 | Langley's reply to ↑ |
| July 1 | Interrog. to New Deal |
| July 7 | Interrog to City of Jacksonville (Com. of Pub Service + Motor Transportation) |
| July 8 | New Deal's Objections to Interrog + Motion Protective Order |
| July 12 | Langley's reply to ↑ |
| July 19 | Langley's motion to overrule object to interrog + deny request for oral argument thereon |

| | |
|---|---|
| July 12<br>&<br>July 15 | Service of motion for am. c'plt on City + New Deal<br>am. to insert proper juris basis for claim agnst city (only to aid already proper juris alleg.) + to insert prayer for damages + add respondent members of city council |
| July 15 | City's objections to interrog. |
| July 25 | hearing on all motions |
| July 28 | Judge McRae dismissed p's am. c'plt for fail st claim/relief cause p. didn't show any depriv of rt, privil or immunity secured by US Constit |
| Aug 4 | Langley's motion to am. judgment |

SS SEDFRE LEWIS, GENEVER et al. VS. STARK, PAULINE et al. 1969
(AFDC-STEPPARENT INCOME)

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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

| | |
|---|---|
| GENEVER LEWIS, individually, and as general guardian of ANNETTE LEWIS and MANUEL LEWIS, and as representative of a class of unnamed plaintiffs similarly situated,<br>Plaintiff<br>vs.<br>PAULINE STARK, et al.,<br>Defendants. | CASE NO. 50238 |
| MARGARET PERCY and MELVIN JONES, et al.,<br>Plaintiffs,<br>vs.<br>JOHN MONTGOMERY, et al.,<br>Defendants. | CASE NO. 50285 |

BRIEF *AMICI CURIAE* OF THE CENTER ON SOCIAL WELFARE POLICY AND LAW, THE ROGER BALDWIN FOUNDATION OF THE AMERICAN CIVIL LIBERTIES UNION, THE NATIONAL WELFARE RIGHTS ORGANIZATION, THE NAACP LEGAL DEFENSE AND EDUCATION FUND, INC., THE NATIONAL OFFICE FOR THE RIGHTS OF THE INDIGENT, CITIZENS' COMMITTEE FOR THE CHILDREN OF NEW YORK, INC., MFY LEGAL SERVICES, INC., NEIGHBORHOOD LEGAL SERVICES CENTER, CAPE-ATLANTIC LEGAL SERVICES, AND NEIGHBORHOOD LEGAL SERVICES PROJECT.

LEE A. ALBERT
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New York, New York 10027
Attorneys for the Center
on Social Welfare Policy
and Law

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## I.

## INTEREST OF AMICI CURIAE

The Center on Social Welfare Policy and Law is the welfare law resource of the Legal Services Program of the Office of Economic Opportunity. Affiliated with the schools of law and social work at Columbia University, the Center undertakes research pertaining to the legal rights of welfare beneficiaries and supports OEO-funded legal services programs and other legal organizations in the preparation of important litigation.

The Center has rendered substantial assistance in cases around the country involving many basic legal issues in the welfare field, including residency tests, work requirements, welfare searches, maximum family grants, and various procedural questions. Foremost among these issues have been the substitute father and man-in-the-house rules in public assistance. The Center has assisted in numerous administrative hearings and court cases involving substitute father rules as they affect eligibility and computation of need. The Center also filed a brief amicus curiae in the Supreme Court case of King v. Smith, and prepared an analysis submitted to the Department of Health, Education and Welfare on the application of King v. Smith to state budgetary and income assumption rules.

The Roger Baldwin Foundation of the American Civil Liberties Union is a non-profit organization devoted to the furtherance of civil liberties and civil rights in all aspects of American life. The transformation of constitutional guarantees of free speech, rational classification, and due process into meaningful protection to needy persons dependent upon the State for their support has been a particular concern of the Foundation and led to its participation as counsel of record in King v. Smith.

The National Welfare Rights Organization (hereinafter referred to as NWRO) consists of welfare recipients and affiliated welfare rights organizations (composed primarily of welfare recipients) throughout the United States, including California. The NWRO is sponsored by the Poverty Rights Action Center which is a membership corporation incorporated under the laws of the District of Columbia. Its national officers are all welfare recipients from such diverse jurisdictions as California, New York, Ohio, Illinois, Pennsylvania and the District of Columbia. Over 30,000 families on welfare, with over 100,000 welfare recipients, pay a small membership dues to the NWRO in order to assist the organization in its work.

The NWRO is the only national organization of welfare recipients in the United States. Organized in 1965, its goals include: informing welfare recipients and applicants of their legal rights; educating its membership and other welfare recipients on budgetary matters affecting them; assisting welfare recipients in pursuing the legal recourse available to them under the laws of the United States and the various states; informing the public and the various legislative bodies of the needs of welfare recipients; seeking change and improvement in the Social Security Act and other laws bearing on the needs of welfare recipients; and, in general, serving as an organized voice for welfare recipients and seeking adequate welfare grants, dignity and justice for recipients.

The NAACP Legal Defense and Education Fund, Inc. is a non-profit corporation, incorporated under the laws of the State of New York in 1939. It was formed to assist Negroes to secure their constitutional rights by the prosecution of lawsuits. Its charter declares that its purposes include rendering legal aid gratuitously to Negroes suffering injustice by reason of race who are unable, on account of poverty, to employ legal counsel on their own behalf. The NAACP Legal Defense Fund, Inc. (LDF), is independent of other organizations and is supported by contributions from the public. For many years its attorneys have represented parties in the courts, and it has participated as *amicus curiae* in many cases, involving many facets of the law.

A central purpose of the Fund is the legal eradication of practices in our society that bear with discriminatory harshness upon Negroes and upon the poor, deprived and friendless, who too often are Negroes. In order more effectively to achieve this purpose, the LDF in 1965 established as a separate corporation the National Office for the Rights of the Indigent (NORI). This organization, whose income is provided initially by a grant from the Ford Foundation, has among its objectives the provision of legal representation to the poor in individual cases and the presentation to appellate courts of arguments for changes and developments in legal doctrine which unjustly affect the poor. Thus NORI is engaged in legal research and litigation (by providing counsel for parties, as amicus curiae, or co-counsel with legal aid organizations) in cases in which rules of law may be established or interpreted to provide greater protection for the indigent.

In carrying out this program to establish the legal rights of the poor LDF and NORI attorneys have handled, inter alia, cases involving public and private housing, consumer fraud and credit, and a number of cases dealing with the rights of welfare recipients. In addition, LDF and NORI joined the Center on Social Welfare Policy and Law in filing a brief amicus curiae in King v. Smith.

The Citizens' Committee for Children of New York, Inc. is a membership corporation composed of professional and lay members who are interested in improving living conditions for all children. Because the Citizens'Committee believes that society must recognize its responsibilities to help every child whose family is unable to provide for him, the Citizens' Committee is working for improved services and attitudes, better education, better health services, better mental health care, better housing and government and private acceptance of the child's legal and moral rights. The Citizens' Committee has assisted needy persons in asserting their mutual rights and in challenging the constitutionality and fairness of many welfare laws and regulations.

MFY Legal Services (New York City), the Neighborhood Legal Services Center (Detroit, Michigan), Cape-Atlantic Legal Services (Atlantic City, New Jersey) and Neighborhood Legal Services Project (District of Columbia) are supported by public funds and provide, together with other neighborhood legal services across the country, virtually all of the legal representation to applicants for and recipients of public assistance. In addition, attorneys from these offices (and other OEO-funded neighborhood legal services programs) are now representing plaintiffs in actions in their respective states involving issues similar to the ones in this case. These offices are therefore directly and vitally concerned with the decision of this Court in the case now under consideration. That decision as to the validity of the HEW regulation may affect the rights of their clients and, in many cases, the class they represent, to receive desperately needed public assistance. The Roger Baldwin Foundation, NWRO, the Citizens' Committee, LDF, NORI, and the Center, together with these neighborhood programs and the other federally-funded legal services programs throughout the nation, have a vital interest in presenting to this Court the full range of issues raised and rules affected by this case.

## II

## INTRODUCTION

Because of the implications of this Court's decision on the scope and character of federal requirements under Title IV of the Social Security Act (42 U.S.C. §601 _et seq_., the AFDC program), and HEW rule-making authority, the nationwide impact of this Court's specific holding on a variety of existing and potential state income and budgetary assumption rules, as well as the likely ultimate review of this case in the Supreme Court, _amici_ wish to present this Court with the full range of relevant factors bearing upon resolution of the issues before it. To avoid repetition we shall attempt to omit arguments raised in the briefs already filed with the Court.

## III. THE PARAMOUNT CONCERN OF TITLE IV OF THE SOCIAL SECURITY ACT IS THE WELFARE AND ECONOMIC SECURITY OF NEEDY CHILDREN DEPRIVED OF THE SUPPORT OF A PARENT AND HEW'S RULE-MAKING AUTHORITY EXTENDS TO THE METHODS USED TO ASCERTAIN THE AVAILABILITY OF INCOME AND RESOURCES TO NEEDY CHILDREN.

### A. Duly authorized rulemaking power of The Department of Health Education and Welfare under the Act is broad and extends to effectuation of the purposes and safeguards of the AFDC legislation.

As this case represents the first successful challenge (to our knowledge) to HEW's exercise of regulatory authority under the AFDC program, it is appropriate to look at some general exercises of HEW's rule-making powers under the program, before turning to the specific question of validity of the HEW regulations in issue here. Such an examination will serve to clarify the federal goals of the AFDC program, the scope of mandated federal interest, and thereby the contours of congressional delegation to HEW.

Although the original Aid to Families with Dependent Children legislation and the amendments passed soon thereafter were far narrower in area of federal concerns and complexity than the present Act, in their solicitude for fair and proper methods of administration and the rights or recipients they represented a sharp departure from previous state and local welfare programs. Unlike these highly selective and discretionary programs, AFDC benefits were to be a statutory entitlement available to "all eligible individuals," 42 U.S.C. §602(6)(10); the state program was to be uniform throughout the state under the administration of a single state agency, 42 U.S.C. §§602(a)

(1) and (3); fair hearings were to be afforded all aggrieved applicants and recipients, 42 U.S.C. §602(a)(4); payments were to be in the form of money without restriction to use, 42 U.S.C. §606(b); and the information gathered about recipients was to be treated confidentially, 42 U.S.C. §602(a)(9).

Although many of the federal conditions on grants to the states under the AFDC program emobdied numerous safeguards and protection for recipients, Congress did not look to them to insure state adherence to the federal requirements. Rather Congress chose a federal administrative agency, a predecessor of HEW, to police the use of federal funds, insure compliance with the Act, and thus to safeguard and effectuate the rights of recipients.

Unlike other titles of the Social Security Act, particularly Title II (O.A.S.D.I., 42 U.S.C. §401 et seq.), the statutory requirements of the public assistance titles were (and are) very broad in nature and plainly contemplated extensive supplementary interpretation and administrative rule making. See, Statutory and Administrative Controls Associated with Federal Grants for Public Assistance, The Advisory Commission on Inter-Governmental Relations, at 9-11 (1964). As the AFDC Grant in Aid Program was without federal precedent and the requirements for state plans were novel in welfare legislation, it is not surprising that substantial federal conditions were tersely put and that Congress left it to HEW to make these requirements both intelligible and effective by exercise of a broad rule-making power in light of the broad purposes of the legislation. Thus, the Act requires hearings, confidentiality, money payments, uniformity, aid to all applicants and recipients throughout the state, an equal opportunity to apply, and the like, without definition of these terms.

Let us now look to what HEW has done with this delegation over the course of decades of administration, keeping in mind that a long-standing course of administrative interpretation and rule-making is itself persuasive authority of the intendment of Congress. A well-established pattern of practice or administration bears a presumption of consistency with the governing statute. See e.g. Helvering v. Winmill, 305 U.S. 79, 83 (1938); Commissioner v. Estate of Sternberger, 348 U.S. 187, 199 (1955). This rule is particularly applicable where, as here, Congress has been aware of the pattern of administration and indeed has on several occasions formally adopted HEW rules and regulations into the statute. See, e.g., 42 U.S.C. §604(5)(1961)(The Flemming Ruling); 42 U.S.C. §602(a)(7) (The "essential person" policy).

The Department's policies on fair hearings, essential persons and equitable treatment are appropriate examples of its broad role in shaping state plans. The regulations on fair hearings stem from the statutory requirement that "a state plan ... must... provide for granting an opportunity for a fair hearing before the state agency to any individual whose claim for ....[aid or assistance under the plan] is denied or is not acted upon with reasonable promptness." 42 U.S.C. §602(a)(4).

This statement gives rise to eleven pages in the HEW Handbook of Public Assistance, setting forth in detail the requirements of a "fair hearing," including subjects and instances where a hearing is necessary; the scope of the hearing (to cover questions of law and conformity); the requirement of an impartial hearing officer; provision for the publication of hearing procedure; proper notice to the client of his right to a hearing; adherence to specified rules of evidence, (including the right to examine documents and records, bring witnesses, refute testimony); the requirement of prompt, definitive and final administrative action within 60 days of the request; and provisions for retroactive payments, continuation of payments in cases of termination and suspension during a hearing process, an attorney, expert witnesses where necessary, and so on. The purpose of these requirements for a "fair hearing" is to insure that individuals similarly situated receive equal treatment and adequate, effective review under the Act, and that state and local welfare departments comply with federal as well as state law.

Also serving the same or similar purposes of the Act--and indicating the responsibility and authority of HEW to implement the federal statute--is the long-established "equitable treatment" doctrine, which imposes significant limitations on the classifications that states may create under the program. Generally stated, this doctrine prohibits classifications which, by limiting or denying aid to needy children for reasons not rationally related to the purposes of the AFDC program, contravenes the statutory mandate of prompt furnihsing of uniform treatment to all eligible individuals. The equitable treatment requirement was early used in the 1930's to invalidate a Georgia quota system containing racial limitations and shortly thereafter to invalidate Arizona's requirement denying aid to Indians. Its most well-known use was in the "Fleming Ruling" overturning the "suitable home" policy of Louisiana prohibiting denial of aid to children in so-called unsuitable homes, unless adequate provisions are made for them elsewhere. Both the doctrine and its application were approved by Congress in 1962 when the Fleming Ruling was expressly incorporated into the statute, without any questions raised regarding HEW's authority to act. Thus, it is clear that HEW has long possessed implied and expressed administrative power to insure the use of federal funds in a manner related to the express goal of the federal program.

HEW's broad power to administer the AFDC program in light of experience under the Act is also well illustrated by the "essential person" doctrine. Although the Act does not mention essential persons, it quickly became apparent that the presence of certain persons in the home was advantageous or essential to the well-being of children furnished aid under the Act. Thus the Department formulated the long-standing policy of permitting states to include, in computing the needs of a person eligible for assistance, the needs of another person (or persons) living in the same home whose presence was deemed essential to the well-being of the recipient. The presence of such person was deemed to be so related to the welfare of the recipient that the financial cost of achieving this result was considered as a part of the recipient's need. Given the basis for this policy, the decision as to whether a person was essential or not was left to the applicant or recipient in the individual case. This use of administrative power to effectuate the purposes of the Act was also expressly approved by Congress and incorporated into 42 U.S.C. §§602(a)(7) and (8) as a part of the 1967 Amendments to the Social Security Act.

Moreover, the Act hasnot remained static since the 1930s. In addition to the amendments mentioned above which have grown out of administrative experience, numerous provisions have been added to the AFDC legislation which vastly extend the reach of federal interest and consequent federal control. For example, the Act now requires specified exemptions of income for AFDC recipients, 42 U.S.C. §§602(a)(8) and (19); adjustment of benefit levels and needs standards to reflect rises in the cost of living, 42 U.S.C. §602(a)(23); and social and rehabilitative services, 42 U.S.C. §§602(a)(13), and (14).

In addition, the purposes of the Act have been expressly stated in language which equals the breadth of earlier provisions. These purposes are "to help maintain and strengthen family life and to help...parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection." 42 U.S.C. §601. This consistent pattern of congressional endorsement of doctrines and rules formulated by HEW, congressional expansion of the area of federal concerns and controls, and congressional expression of the federal purposes and goals inherent in HEW's administration in no way suggest disapproval or narrowing by Congress of HEW's administrative authority. To the contrary, there has been no collision with congressional will.

### B. California's treatment of income of a stepparent and MARS violates the general and valid HEW regulations requiring that income be actually available on a regular and continuous basis.

There are essentially two HEW rules, which, if valid, render nugatory the California statute (Cal. Welf. & Instit. Code §11351) and regulations (Pub. Soc. Serv. Manual, §§42-535, 44-133) thereunder. The California law mandates reduction of the AFDC grant where a man not the natural or adopting parent of needy children but residing in the household of an AFDC family, is said to be intimate with the mother and either actually provides support to the family (not applicable here) or represents himself to the community in such a way as to appear in the relationship of husband or father (which is another way of saying that he cohabits with the mother). Cal. Welf. & Instit. Code §11351; PSSM §42-535. The reduction required is determined in accordance with a formula which specifies certain allowable deductions from income and a welfare budget for the MARS* and his children living with him. The formula then allocates the balance to the AFDC family. PSSM §44-133. The formula concedely ignores various deductions such as existing obligations, and the proven actaul availability of income is not itself controlling. As this Court has noted, there is a large measure of hope or expectation in the California reckoning of the budget. Lewis v. Stark, _____ F. Supp. _____, Case No. 50238 (N.D. Cal., Dec. 19, 1968), Slip Op., p. 8.

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* The California statute and regulations treat the income of the stepfather and MARS ("mas assuming the role of spouse") in the same fashion; we shall use the words "MARS" and "stepfather" interchangeably.

HEW, on the other hand, has a strong general policy against the assumption of the income or resources of anyone (except those of a natural or adopting parent residing in the household), including actual relatives of the children in or out of the house. As part of this policy, HEW prohibits the reckoning of income in such a manner as to hope for its existence but in no way insuring it. Under this policy, it is the availability of income, and not merely its existence, which is controlling. This policy finds expression in Section 3131(7) of Part IV of the HEW Handbook of Public Assistance, in force since 1966, which provides that no income may be assumed or included in determining need unless it is "in fact, available ... for current use on a regular basis." The Supreme Court gave approving reference to this regulation in King v. Smith when it found that the regulation "properly excludes from consideration resources which are merely assumed to be available to the needy individual." 392 U.S. 309, 319, n. 16 (1968).

Specific prohibitions in the federal regulations illustrate by way of example the problems revealed by administrative experience under the program and dealt with by the policy. A state may not include support payments of the natural father living outside the house, even where they are the subject of a court order, unless they are in fact made on a regular and continuous basis. Handbook, Pt. IV, §3120. The existence of a court order itself does not guarantee regular payments from an abandoning or deserting spouse, and HEW accordingly requires some other assurance, such as payment directly to the welfare department. Handbook, Pt. IV, §3124. Similarly, a state may not budget contributions from relatives generally, even where such persons have been determined able to make them, unless they are in fact made on a regular, continuing basis. Handbook, Pt. IV, §3120. This is true regardless of whether the relative is a person living in or outside the AFDC home and regardless of whether the relative is said to be legally obliged to support or not. Where the relative or other person with income is living in the same home as the recipient of AFDC, this policy is assured by the "essential person" doctrine, now statutory, which as noted above, allows the needs and income of such person to be budgeted in the AFDC budget only where the recipient so elects or where the income is proven to be available. Or, again, income from work may not be assumed unless both the work and the income actually exist. Ibid. The asumption of support payments by a natural and legally liable father or relative is not an acceptable support incentive. See Anderson v. Schaeffer, Civ. No. 10443, 10882, 10991 (D.C. Ga., N.D., Apr. 5, 1968). These rules of course do not render the states impotent to deal with the income of persons said to be liable for support. They merely specify the manner in which states must ascertain and obtain such income. Thus another HEW regulation directs states to develop potential sources of revenue, such as O.A.S.D.I. benefits, but not to assume them. Handbook, Pt. IV, §3140.5. Under these rules states are quite free to pursue the income of anyone on whom they impose a legal obligation of support to defray welfare costs. Assumption is simply not the way to pursue the income.

The experience behind these rules is obvious and the policy is succinctly stated in the federal handbook:

> "For families whose incomes are limited, an interruption or fluctuation in support payments can result in severe hardship to the family. Reduced assistance payments based on assumed receipt of support payments or any other income that is not, in fact, available, are inconsistent with the welfare agency's responsibility for meeting need and strengthening family life. They result in inequity in meeting the continuing needs of the families affected.*" Handbook, Pt. IV, §3124.

That this general rule is a proper exercise of rule-making authority under the Act and that the subject which it regulates goes to legitimate federal concerns cannot be doubted. The statute requires a state agency in its state plan to take into consideration, "in determining need, any other income and resources of any child or relative claiming aid to families with dependent children." 42 U.S.C. §602(a)(7). Plainly this provision commands consideration of available income and resources of the child or relative claiming aid, but, equally plainly, it does not command consideration of other income and resources not available to the child or relative. It is the "other income and resources of any child or relative" and obviously only of the child or relative which are to be considered. The statutory directive of §602(2)(7) on its face thus contemplates rules for determining when income and resources are "of a child or relative." Being a federal dictate imposing requirements on a state plan, the rules contemplated are federal rules and that means rules formulated by the agency charged with the responsibility of approving and verifying compliance of state plans with the federal statute. Further, this very provision goes on to endorse consideration, in certain circumstances, of "any other income and resources...of any other individual (living in the same house as such child and relative)" [emphasis added], thus making doubly plain the contemplated determination of when income and resources are of the relative and child and when they are income and resources of others which may or may not be available to the relative or child. The determination of actual availability of income and resources to the child or relative claiming aid is thus an integral part of §602(a)(7).

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* In implementing this policy, HEW further specifies that loans may not be considered a resource if they are restricted in use and cannot be used for current maintenance, Handbook, Pt. IV, §3122; home produce may not be considered a resource, Handbook, Pt. IV, §3112; and a state agency may not reduce current payments because of prior overpayments unless income and resources are currently available to meet need. Handbook, Pt. IV, §3120.

Yet California does not proceed under the latter mandate of §602(a)(7) (requiring consideration of the income and resources of another individual living in the home whose needs the state determines should be considered in determining the need of the child or relative) in its policies governing MARS and stepfathers. The reaons are not far to seek. The reference in §602 (a)(7) to the income and resources of other persons living in the home incorporates the essential person doctrine first formulated by HEW, which requires consent of the relative or child for inclusion of another in the family budget. This provision also requires allowance of the income exemptions specified in §602(2)(8), which California does not pretend to allow. But the incorporation of HEW's essential person doctrine in §602(2)(7) requiring recipient consent and requiring income exemptions makes clear that the consideration of income and resources was a matter of federal statutory concern committed to HEW for appropriate rulemaking. This is particularly so because the income assumption rules and policies set out above and found in the federal handbook existed when Congress amended §602(a)(7) at the end of 1967. Congress made statutory a very part of that income policy; and doing so it hardly rejected the rest, which itself is intimately related to the essential person doctrine. Further, it is inconceivable that Congress enacted the HEW essential person rules in §§602(a)(7) and (8) and then endorsed avoidance of them through use of the fiction that the income and resources of others living in the same house are income and resources of the child or relative claiming aid.*

The evils and problems with which the federal policy is concerned, revealed by years of experience with state and local welfare administration, amply demonstrate its validity as a subject of paramount federal concern under AFDC legislation. That evil, in general terms, is the denial or reduction of aid to needy dependent children deprived of parental support on the assumption that the income and resources of others not the parent of the child (or indeed of the actual father absent from the home) are available to such children. Though taking a variety of forms, such as assuming availability of court ordered support payments of an absent father, or assuming the availability of income from a brother or grandparent living in the home and said to be legally obliged to support, or, as here, assuming the income of a stepparent or so called substitute father living in the home and obliged to support, such rules all share the common purpose of assuming income and resources on the hope or expectation that such assumption will produce them. They also all share a common effect of denying or reducing aid in circumstances where experience has shown that income and resources might well not be available. This practice and its effect on needy dependent children is plainly contrary to the express purposes and statutory provisions of the AFDC legislation.

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*Stepparents and MARS living in the home of the AFDC family may, of course, be treated as essential persons. As California concedes, they are not a relative claiming aid within the scope of §602(2)(7) (under California law they may not claim aid, itself a violation of §§602(2)(7) and (8) and, as shown later, they are not and cannot be deemed "parents" within the intendment of §§601 and 606. Being neither parents nor relatives claiming aid they can only be "any other individual (living in the same house as such child and relative), or simply persons with income which is a potential but not actual resource of the relative and child claiming aid.

As made abundantly clear in King v. Smith, the overriding concern of the AFDC program is the economic security and well-being of dependent children deprived of the support of a parent. "[P]rotection of such children is the paramount goal of AFDC." 392 U.S. 309, 325. To provide meaningful protection to such class of children, Congress provided that aid be furnished promptly "to all eligible" children, that all persons have an opportunity to apply, that a hearing be provided to challenge any denial or limitation of aid, that the program be uniform throughout the state and that aid may not be denied children in unsuitable homes unless the state makes provision for them elsewhere. See pp. 7,8, supra. King v. Smith also teaches us that a state may not declare ineligible or deny aid to a child within the class Congress sought to protect in order to effectuate some legitimate but extraneous state policy, such as insuring parity between a family with a man in the house and a family with the actual father in the house. The Supreme Court found that in light of the desperate need of children deprived of the support of a parent, the Act may not be used as a vehicle for a potpourri of state policies, however legitimate the policies.

This statutory framework provides a more than ample basis for HEW to define the circumstances in which a state may or may not assume the availability of income. Plainly, state practices of assuming income and resources where these might not be available on a regular basis crucially affects the welfare and economic security of needy children. It simiarly affects the fair and equal treatment of persons in need and the uniformity guaranteed by the AFDC legislation. The uniformity required by the Act is not an empty endorsement of unequal treatment throughout the state, but an assurance of equal treatment of persons in need. See, Williams v. Dandridge, Civ. No. 19250 (D. C. Md., Dec. 13, 1968); 9233 CCH Pov. L. Rep.; Anderson v. Schaefer, supra, p. 16 Glona v. American Guar. and L. Ins. Co. 391 U.S. 73 (1968); McLaughlin v. Florida, 379 U.S. 184 (1964). In addition, reducing the grant on the basis of income which experience indicates might not be reliably forthcoming plainly violates the statutory command that aid shall be furnished to all eligible persons.

Income assumption and budgetary rules, even when based on a so-called legal obligation of support, affect all of the above statutory dictates and goals in much the same manner as do state imposed eligibility conditions, which are unarguably a matter of proper federal concern under King v. Smith. Eligibility rules, such as Alabama's substitute father rule, totally deny aid to children in need; income assumption and budgetary rules, not founded on actual and proven availability of income reduce aid which already exists at or below a subsistence level and thereby substantially deny aid to children in need. Persons living on the boarderline of decency on a full AFDC grant could not be persuaded that they are not being denied aid because they receive a grant for shelter without a grant for food or clothing. Plainly the amount of aid to children who, as shown below, concedely fall within the category and thus are needy dependent children is as much a federal concern as sundry eligibility condtions affecting such children in much the same manner.

This should not be confused with a very discrete area long reserved to the states under the AFDC program. "There is no question that states have considerable latitude in allocating their AFDC resources since each state is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program." King v. Smith, at 318,319. Although this is not completely true any longer, since Congress now requires the states to exempt a substantial portion of the income of AFDC recipients, 42 U.S.C. §§602(a)(8) and (19), and also to adjust both the determination of need and grant levels in light of rises in the cost of living, 42 U.S.C. §602(a)(23), nonetheless allowing states to determine need and set grant levels is far different from allowing states to determine who among eligible recipients will receive what amount. Grant levels and need relate to local conditions such as local costs of living and the total amount states are willing to spend on the program. This deference to localism in no way entails permission to choose who among the equally needy gets what amount. The Court in *King v. Smith* made this difference quite clear in rejecting Alabama's justification that its regulation allocates its limited resources available for AFDC assistance by reducing the caseload of its social workers and providing increased benefits to those still eligible for assistance. 392 U.S. at 318. *Anderson v. Schaefer*, *supra*, p.16, holding that the state of Georgia may not assume the availability of employment and income from employment during harvest season and *Williams v. Dandridge*, *supra*, p.21 , holding that Maryland may not establish a maximum grant level for families of four or more persons, also make this distinction clear. Local conditions bear no relation to the validity of the assumption of income and resources. That is a subject transcending state boundaries to be dealt with by HEW in light of national experience. Of course any restrictive rule or income saves money, but the states were not granted autonomy under the Social Security Act to conserve resources in any manner they saw fit. It is the use of federal money by the states in the service of federal goals which is controlling here. Plainly HEW may define the circumstances in which a state must establish the actual availability of income rather than assume it before deducting income from a subsistence grant covering basic and fundamental needs of dependent children.

It is clear that the California regulations and practice run afoul of this general HEW policy in two ways. In computing need of the AFDC family, California includes income of a man in the house (who is not the father or indeed an actual relative of the children) which may or may not actually be available on a regular basis. It further computes his net income assumed to be available without regard to expenditures which in fact may exist. And, if more be needed, California then relies upon this income-assumption regulation and the severe needs of the family to provide a support incentive for a MARS or stepparent, which is precisely what HEW has ruled may not be done even with actual relatives in or out of the house, and, indeed, with the actual absent father of the children. California urges that it complies with this general policy of computing only income actually available and points to its so-called legal obligation of support as proof that the income is actually available. Cal. Welf. & Instit. Code §11351. In so doing, California denies the distinction which HEW has made between income proven to be available on a regular basis and income merely assumed to be available because of a legal obligation.

### C. The HEW substitute father regulation is a valid particularized expression of the foregoing policy which applies to the income and resources of all manner of men who are not "parents" within the Social Security Act.

It should be apparent by now that the HEW regulation dealing with substitute parents, the regulation invalidated in this Court's earlier opinion, is but a particularized expression of the above general policy against assumption of income. Since the assumption of income of men frequenting or living in the household of the AFDC family (such men being neither the actual nor the adopting parent of the needy dependent children) is productive of the same evils under the Act and is violative of the same statutory provisions as the assumption of income of all other persons, the specific regulatory prohibition regarding stepparents and substitute parents is an equally valid exercise by HEW of its rule-making power. The economic security of needy dependent children deprived of the support of a parent is assured by this regulation in exactly the same manner as it is assured by the general regulation, which was approved in King v. Smith, 392 U.S. at 319, and which itself condemns the California practice. Specific expression of the above general principle was necessary because, although there was little overt controversy over the rules governing assumption of income generally, the states could not resist different treatment of the man-in-the-house. He and his income and resources were singled out for such treatment for several reasons: there was moral antipathy to his relationship with the mother, and there was an equally potent antipathy to allowing either a non-married or non-adopting male, thought to be enjoing the privileges of marriage or fatherhood without the concurrent obligations, to be in a better position regarding support than a natural or adopting father. (Of course, this antipathy ignores that the states themselves in their support laws create the disparity by refusing to impose a stable and full-fledged legal obligation of support on stepfathers and men in the house.)

As illustrated by California, some states, based on this reasoning, treat stepparents and men in an AFDC household as parents or supporters of needy children, and all of their income, less a welfare budget for themselves and their own children, is deemed available to the AFDC family. This special treatment of their income is defended by the existence of a special "welfare obligation" to support an AFDC family imposed on stepparents and MARS so long as they cohabit with the family. It is said that this legal obligation to support by itself renders the income a resource of the children and relative claiming aid, notwithstanding that this is plainly inconsistent with the approach taken towards all other persons, including absent fathers and relatives with an obligation to support. In the latter situation income must be proven available and a legal obligation itself is not sufficient. But stepparents are said to have some different relationship to the children and relative claiming aid under the AFDC legislation which justifies this different treatment of their income and prohibits application of HEW's general policy assuring the economic security of needy children to such parents.

Thus California argues, and this Court's opinion holds, that the regulation dealing with stepparents and MARS goes beyond the King v. Smith decision and beyond the regulations dealing with the income of relatives and others generally (we do not understand this Court to have invalidated HEW's general policy requiring actual availability of income expressed in §§3100-3199 of Pt. IV of the Handbook). The premise here that stepparents and MARS in California, having a substitute parent form of legal obligation of support, are thereby to be distinguished under the AFDC legislation from the substitute parents dealt with in King v. Smith and all other persons dealt with in the HEW general regulation, requires critical examination. This is particularly so since the problem of the treatment of income and resources of stepparents and men in the house arises from a confusion of such parents with a "parent," as that term is used in Section 402(a) of the Social Security Act, 42 U.S. C. §602(a). Such examination will show that stepparents and MARS living in the AFDC home stand in no different position under the ACT than do all other persons whose income is a potential resource of the AFDC family.

Men in the house, including stepparents and MARS in California, are not "parents" under §602(a), even where there is a so-called welfare legal obligation to support. "Parent" in 602(a) and in other sections of the Act refers only to a natural or adopting parent or father, who has a well-recognized, full-fledged, and stable obligation to support his children and, in addition, something more, which relates to the economic security of needy children. That is, he has the natural bond of affection towards his own children living in his home, or the voluntary bond of affection and consent to support toward such children manifested in the act of adoption. As the Court developed in detail in King v. Smith, Congress in establishing the AFDC category was distinguishing between two groups of needy children--those whose need arises from the unemployment of a "parent" (referred to as a "breadwinner," "wage-earner," or "father"), and those whose need arises from the absence, death or incapacity of the "breadwinner," "wage-earner," "father." Only the needs of the latter group, characterized in the original House Report as "one clearly distinguishible group of children," H.R. Rep. No. 615, 74th Cong., 1st Sess., 10 (1935), and in the Act as "dependent" children, were to be relieved under the AFDC program; the needs of the former, representing a stable family, were to be met by employment programs for fathers. As the Court further said in Smith, "to describe the sort of breadwinner [Congress] had in mind, [it] employed the term 'parent.'Smith v. King, 392 U.S. at 328, 329.

To be sure the Court in Smith was dealing with disqualification because of a man who had intimate relations with the mother in the house but was without any form of legal obligation of support under Alabama law. Hence the Court at times used the term "parent" and legal obligation of support interchangeably, though it also stressed absence of support in fact. But, and this is crucial to our inquiry, the Court assuredly was not saying that any person or man said to be bound or obligated to support another's child was a "parent" within the Social Security Act. It recognized that when Congress defined the category and on every occasion since when Congress employed the term "parent" in the Act, it was dealing with the reality then and now that under the laws of the fifty states and the District of Columbia only natural and adopting fathers have a general, stable, and full-fledged legal obligation of support. In defining the category of needy dependent children, Congress was not dealing with very special so-called legal obligations to support of stepparents and substitute fathers developed in various states since the Act of 1935 and found only in the welfare laws of such states.*

This welfare obligation of support does not represent the economic security for children of a "breadwinner, wage earner, father" referred to by Congress in defining the category of children eligible for aid and the Court in Smith in construing the category.

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* Thus California's so-called obligation to support of stepfathers and MARS is an exception to its domestic relations laws, see Civ. Code §209, and was enacted in its welfare code in 1951 for stepfathers and 1961 for MARS. Cal. Instit. & Welf. Code §11351.

Such obligation is inherently evanescent and unstable, lasting only so long as the man voluntarily cohabits in the ADC household. It is operative only where the mother and children apply for or receive public assistance under the ADC program. And it is based on a relationship between the man and the ADC mother and not on any bond whatsoever between the needy children and the substitute spouse. Accordingly it is not surprising that the obligation is rarely, if ever, the subject of judicial support orders and that welfare departments rarely themselves pursue the obligation in court, although they are authorized to do so. See, e.g., Cal. Welf. & Instit. Code §§11475, 11476, 11488. Better to assume fulfillment of such obligation. In sum, Congress was legislating with reference to the prevailing system of family law in this country, not the recently developed special obligations prompted by welfare programs and applicable only to welfare families.

As the Court also developed in Smith, the use of the term "parent" in other sections of the Act makes this very clear. Thus Section 402(a)(10), enacted in 1951, requires a state to provide prompt notice to law enforcement officials "in respect of a child who has been deserted or abandoned by a 'parent'". 42 U.S.C. §602(a)(10). "The 'parent' whom this provision requires to be reported to law enforcement officials is surely the same parent whose desertion makes a child eligible for AFDC assistance in the first place. And Congress obviously did not intend that a so-called 'parent' who has no legal duties of support, "Smith, at 330,331,beyond a supposed obligation to the children of others while cohabiting (but not afterwards) was to be referred to law enforcement officials. MARS and stepparents are simply not deserting or abandoning parents, as those terms are commonly understood, for the very purpose of such referrals is to institute non-support proceedings. See Handbook, Pt. IV, §§8100-8149. Similarly, the 1968 amendments to the Social Security Act provide that as regards any child receiving aid who has been deserted or abandoned "by his parent," the states must establish a program to secure support for such child from such parent. 42 U.S.C. §602(a)(17). Also, states are required to report to HEW any "parent...against whom an order for the support and maintenance of such [dependent] child...has been issued by "a court, if such parent is not making the required support payments. 42 U.S.C. §602(a)(21). Still another amendment requires the states to cooperate with HEW in locating any "parent" against whom a support petition has been filed in another state, and in securing compliance with any support order issued by another state. 42 U.S.C. §602(a)(22). As the Court said in Smith, the "pattern of this legislation could not be clearer." 392 U.S., at 332. The provisions seek to secure parental support in lieu of AFDC support for dependent children. Children with alleged substitute parents not actually subject or subjected to judicial support orders are entirely unprotected by these provisions. Ibid.

This pattern of legislation and the Court's opinion in Smith amply demonstrate that Congress was defining a federal category of needy dependent children when it commanded the prompt furnishing of aid to all children deprived of the support of a "parent." But if a state may determine when a child is deprived of parental support with reference to its own special rules of legal obligation to support applicable to substitute parents of AFDC families, then it is free to define and redefine "parent" as that term is used in the Social Security Act. That is to say, the sine qua non for eligibility for ADC is the deprivation of the support of a "parent." Were "parent" to mean any legal obligation to support and include the special legal obligations involved herein, the requirements of the Social Security Act spelled out so carefully in King v. Smith would be illusory. Under this reasoning Alabama's fault in Smith was merely the technical failure to impose its own legal obligation of support on those whom it deemed to be substitute fathers of ADC children. The safeguards of the AFDC legislation directing the proper use of federal moneys cannot so easily be avoided.

Distinguishing California's substitute spouses and stepparents from Alabama's substitute fathers in King v. Smith by virtue of the former's special obligation of support ineluctably leads to another unacceptable conclusion, one which California understandably does not wish to pursue. If "parent" means legal obligation to support and that includes the obligation imposed on MARS and stepparents in California, federal reimbursement under AFDC for any aid furnished a family with a stepparent or MARS in the house is simply not available. The children, however, needy, are not deprived of parental support because of absence, death or incapacity of a "parent," which is the controlling condition for federal participation in granting aid to families with dependent children. The family simply is not an AFDC family. Congress clearly has not excluded this entire category of needy children from AFDC and California does not argue otherwise. But that is simply another way of saying that MARS and stepparents, quite regardless of their "legal" obligations of support, are no more "parents" within the AFDC legislation than Alabama's substitute fathers.

It is for these reasons that HEW's substitute father regulation deems special and limited obligations imposed on stepparents and others to be an evasion of King v. Smith and that the regulation itself follows from the decision, which defined the term "parent" in the Act. The regulation deals with income assumption and budgetary rules along with eligibility conditions because, as discussed above, all of these rules deny aid, in whole or part, to needy dependent children and this is what the Court in Smith said could not be done.

Accordingly, California's MARS or stepparents are either essential persons within the AFDC household, if California elects to so treat them and the AFDC family consents, or they are merely persons, such as relatives or friends or an absent father, with income that may be a potential resource of the AFDC family. California may not treat them or their income differently, quite regardless of the moral antipathy to the relationship or the non-support. As with the income of all others, California may develop the resource. It may not assume it.

Once it is established that the subject of income assumption and budgetary rules is one of proper federal concern under the Act and that MARS and stepparents are on no different footing than other persons with potential resources, it is not for California or this Court to judge the reasonableness of the requirement of proven contributions. It is, of course, reasonable for HEW to act on the belief, informed by experience, that these informal unions do not reliably guarantee continuous support for needy children. Just as California may generalize regarding reckoning of income, as this Court has noted, so too may HEW generalize regarding likelihood of availability of income. California differs, but it is not charged with the responsibility of administering the Social Security Act so as to carry out its purposes and ensure the economic security of needy children. California is free to impose and pursue whatever obligations it wishes on MARS, stepparents, or other persons (within constitutional limits) but it is not free to use federal moneys in a manner which is contrary to the economic security of needy dependent children.

## IV

## CONCLUSION

For the foregoing reasons the Government's Motion for Intervention should be granted. The Motion for Rehearing should also be granted.

Respectfully submitted,

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MAR 7 1969

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Dear Carl:

Here's a copy of our amicus brief in Lewis v. Stark. The Government's Motion to Intervene and to Reargue is scheduled to be heard on March 7, so we should have a decision soon.

Sincerely,

NDL

Nancy Duff Levy
Staff Attorney

NDL:dc
Enc.